

Land, Law and History: Actors, Networks and Land Reform in Solomon Islands

Joseph Daniel Foukona

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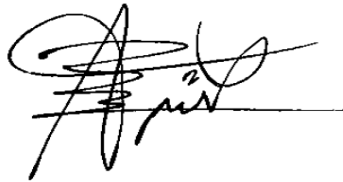
An informal market house at Jackson Ridge, Honiara, 2013

A thesis submitted for the degree of Doctor of Philosophy at The Australian National University

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STATEMENT OF ORIGINALITY

The work presented in this thesis is, to the best of my knowledge, my own original work, except where acknowledged in the text.

A handwritten signature in black ink, appearing to read 'Foukona', with a large, stylized initial 'F' and a horizontal line extending to the right.

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The National Library of Australia allowed me to peruse materials in their collection, while the Auckland University Library hosted me for two weeks and gave me access to their Western Pacific High Commission collections. The University of Melbourne Archives scanned materials from Peter Brett's collection and emailed them to me. The Department of Special Collections, Bodleian Library University of Oxford scanned papers from Frederick Richard K. Kitto collection and emailed them to me. The Manuscript Division of the Library of Congress in Washington D.C allowed access and scanning of Sir Frederick Beaumont Phillips documents in the Margaret Mead papers. I also undertook archival research at Solomon Islands National Archives for three weeks, where the staff assisted me in finding colonial files for useful nuggets of information. Staff from these various institutions assisted my research in important ways, and for that I say thank you!

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ABSTRACT

From the onset of the colonial era, land reform in Solomon Islands has focused on changing customary landholding arrangements so as to improve productivity and stimulate economic growth. Most land in Melanesia remains under customary tenure, which is broadly communal by nature and cannot be alienated without profound social disruption. Customary land, social relations, livelihoods, power structures, knowledge, identity and place are all inter-related in Melanesian life-worlds. This complexity is still poorly understood by those promoting the view that customary land hinders development, and needs to be reformed in order to establish secure property rights and enhance productivity.

Land reform has been on the Solomon Islands development agenda for more than a century. Its implementation has always focused on enacting land laws to facilitate the transition of customary land to private property rights regimes. This is founded on a development model based on economic premises that remain largely unchanged since the colonial period. This thesis draws on Actor Network Theory (ANT) as a frame to extend the analysis of land reform in Solomon Islands over a long historical trajectory. Using ANT as a frame in this thesis draws particular attention to the roles and networks of key actors in land reform.

Land reform has often been reduced to questions of land registration and land recording. But in Solomon Islands, as elsewhere in Melanesia, the explicit focus in land reform narratives is on ‘unlocking the potential of land held under customary tenure’, because it is assumed that land is ‘locked up’ under custom. Such narratives are part of the global flow of ideas transmitted and translated by key actors. This thesis seeks to provide insights on the role of particular actors and their networks to explain why land reform has been a persistent challenge in Solomon Islands, from 1893 to the present, and how the challenges of land reform might be addressed in a more equitable and effective manner.

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NOTE

In this thesis, I use place and island names as they were referred to in archival records, court records and lands commission records. In some instances, where reference is made to two names for the same island or place such as Malayta or Malaita, I use the current name unless quoting the author. For the term ‘native’ I will use ‘islanders’ in the text unless quoting the author. To ensure clarity I have edited quoted material where necessary, otherwise generally I retain the original voice in which they were written by maintaining the spelling and grammar. I use ‘Solomon Islands’ rather than ‘the Solomon Islands’ as the country’s official name throughout the thesis.

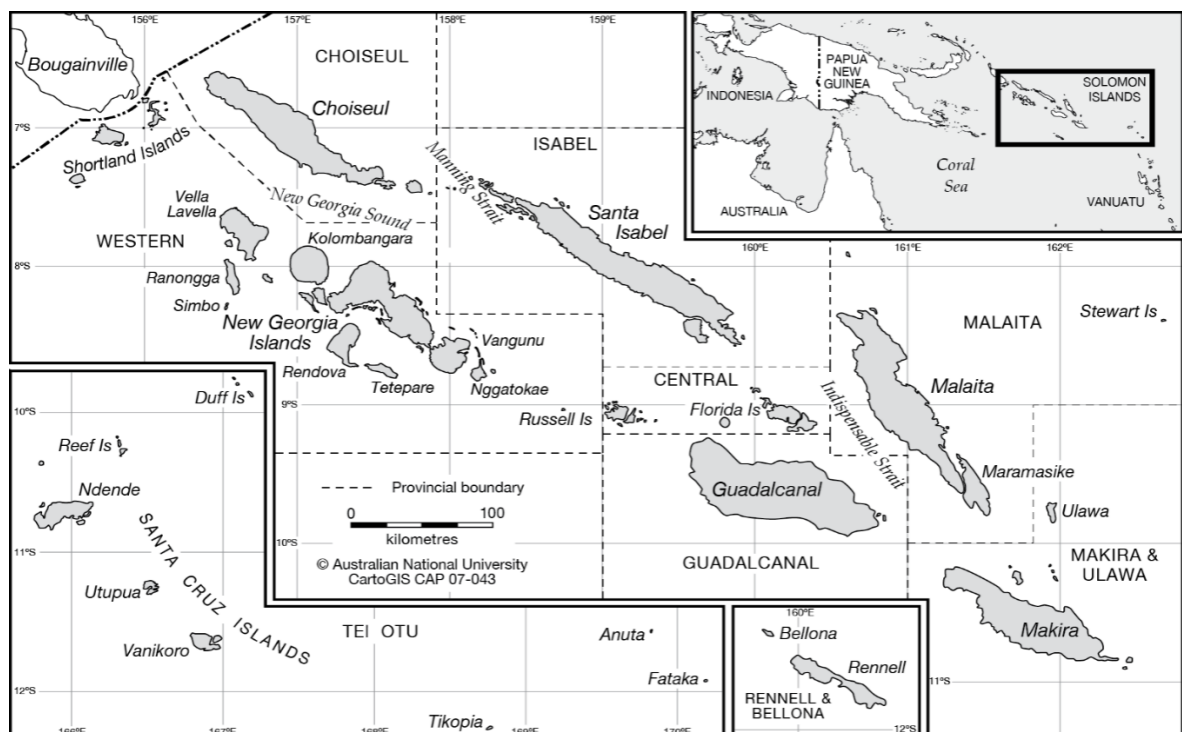
ABBREVIATION

ANU	Australian National University
AusAID	Australian Agency for International Development
BSIP	British Solomon Islands Protectorate
CNURAG	Coalition for National Unity and Rural Advancement Government
DFAT	Department of Foreign Affairs and Trade
GCCG	Grand Coalition for Change Government
IPS	Institute of Pacific Studies
NCRAG	National Coalition for Reform and Advancement Government
NCGPUR	National Coalition Government for Peace Unity and Restoration
PMB	Pacific Manuscripts Bureau
RAMSI	Regional Assistance Mission to Solomon Islands
SINA	Solomon Islands National Archives
UASC	University of Auckland Special Collection
USP	University of the South Pacific
WPHC	Western Pacific High Commission

Map 1: Regional map of Melanesia, Polynesia and Micronesia
Multimedia Services, College of Asia and the Pacific, Australian National University

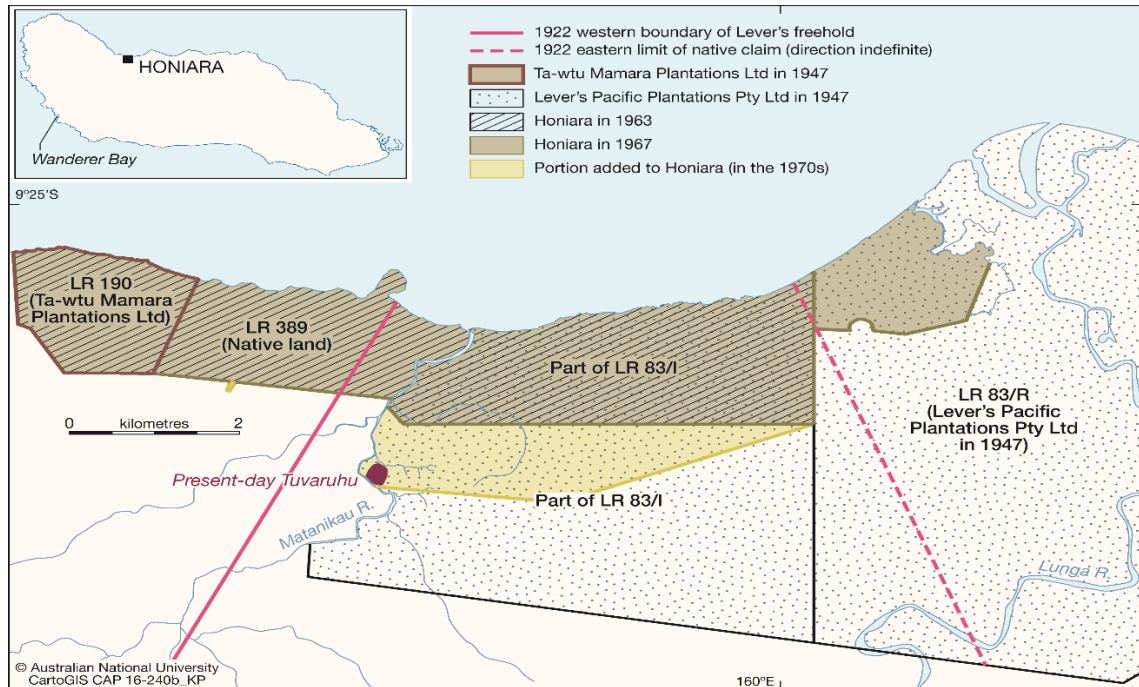


Map 2: Solomon Islands, showing current provincial boundaries.
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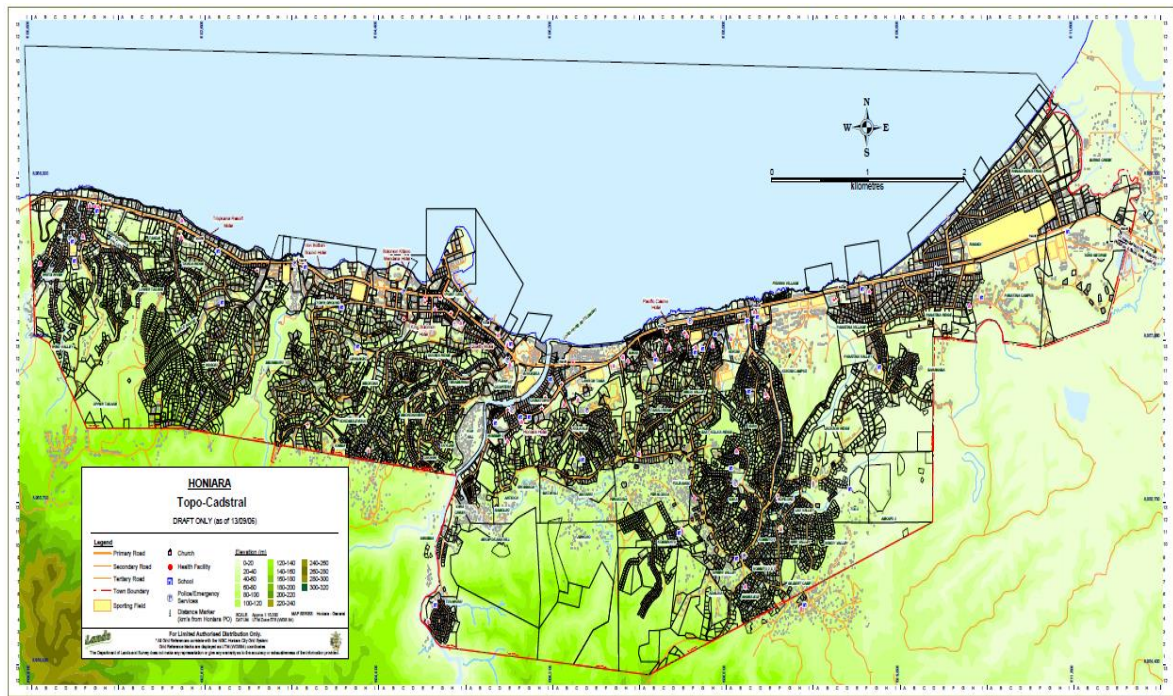


Map 3: Guadalcanal, showing Honiara town boundary as it has changed over time and location of Wanderer Bay.

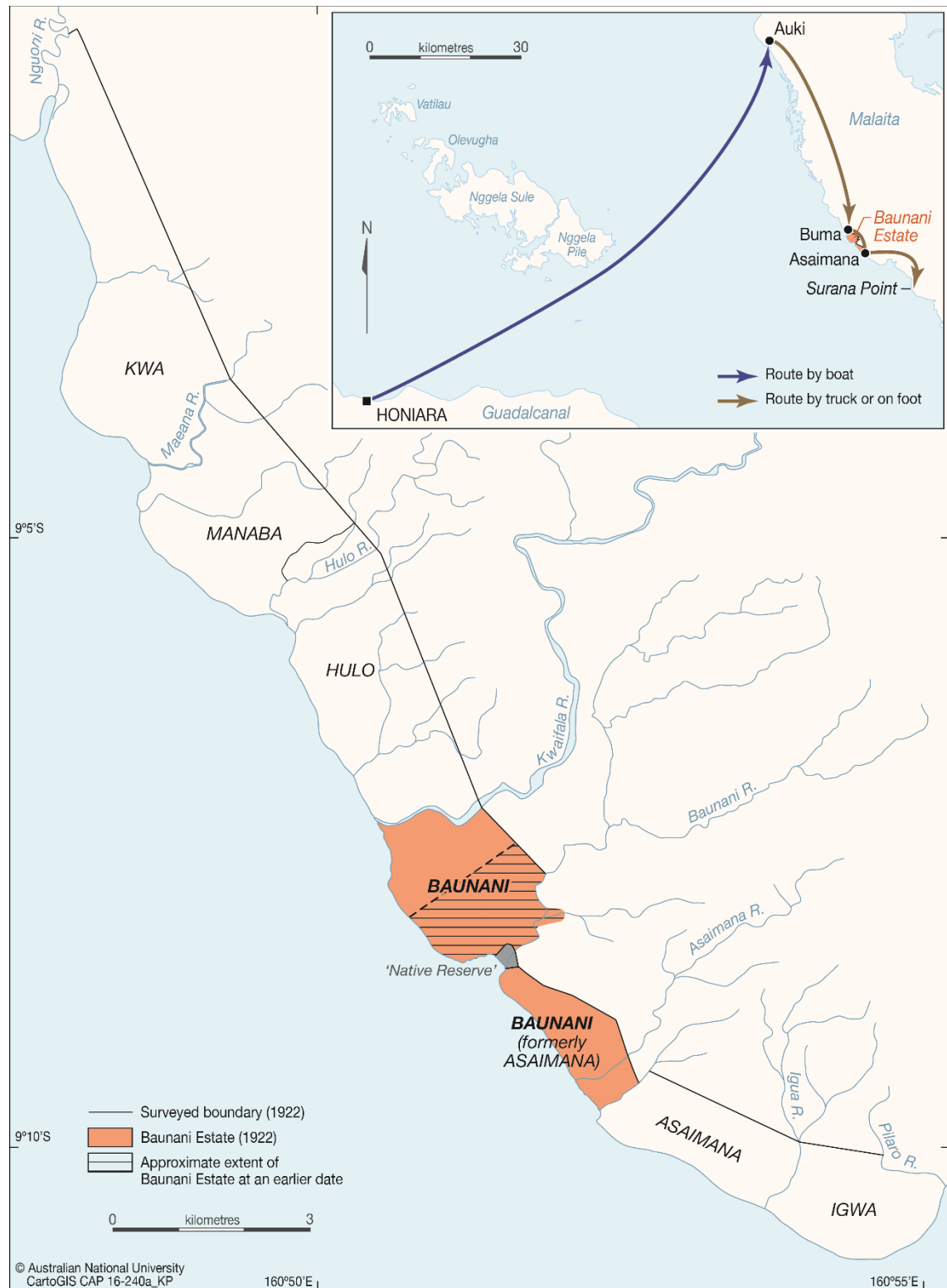
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Map 4: Honiara, showing current town boundary
Solomon Islands Government, Ministry of Lands, Housing and Survey



Map 5: Malaita, showing Baunani Estate.
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Chapter 1: Introducing Land Reform in Solomon Islands

1.1 Introducing Land Reform

The need for land reform in Solomon Islands [was] already recognised as early as the 1900s to mid-1920s. We believe the country has a lot to learn from the attitudes and policy rationale[s] that clearly manifested themselves in the various reforms that were undertaken [at] different times over the last one hundred and fifteen (115) years.¹

The long history of land reform in Solomon Islands, together with its influence on more recent attempts at reform, are clearly signaled here by Prime Minister Manasseh Sogavare. This thesis addresses the obvious question that is immediately posed by this history: why have there been so many attempts at land reform in Solomon Islands, and what might this history tell us about the grounds for success and failure of land reform more generally? As a Solomon Islander, I am interested not just in documenting that history but also in asking how land reform might actually work successfully in Solomon Islands.

To answer this question, I examine the roles of individual actors in instigating land reform through the enactment of property regimes that are influenced by power, authority and property relations between the state, individuals and the capitalist market. Under the conditions of these regimes, property has become commoditised, transferrable and subject to continuous renegotiation by individual actors and agents of the state.² I am interested in

¹ Keynote address by the Prime Minister, Hon. Manasseh Sogavare MP, 'Building a Pathway for a Successful Land Reform in Solomon Islands', 26-27 August 2016, Forum Fisheries Agency, Honiara.

² Rebecca Monson makes this point in her consideration of the interface between gender and the processes of negotiation that impact on customary land tenure systems in Solomon Islands: Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis; Sara Berry makes similar observations for Africa, highlighting how the link

examining individual actors through an interpretivist approach because the way in which they interpret reality seems to be such a significant factor in the arc of land reform, contributing to the ways in which land reform is framed and translated into land law to facilitate the enactment of property.³

Land is always and inevitably a substantial and complex topic for research, and an adequate understanding of attempts at land reform requires a high degree of precision and clarity in definitions and analysis. For some actors, land reform is a ‘systematic change in property distribution, farm size and land tenure condition’.⁴ Others consider land reform as an ‘effort to rearrange, reconfigure, or redefine existing tenure relationships to allow land to become a marketable means of productions’.⁵ The late Ron Crocombe, a New Zealand academic who worked extensively on land issues across the Pacific, explains land reform as ‘policies or programs designed to change land tenure and related aspects of the economy or polity ... to increase productivity, equity, and administrative efficiency and reduce litigation’.⁶ In this way, land could be made available for redistribution to the poor or as collateral to access capital from financial institutions for developmental activities.⁷

between contestation over land and political authority changes power relations: Berry, S. (2002). ‘Debating the Land Question in Africa.’ *Comparative Studies in Society and History*, 44(4): 638-668.

³ This enactment of property according to Blomley takes place through preparing of surveys, drawing of maps, building fences and development of the land: see Blomley, N.K. (2002). ‘Mud for the Land.’ *Public Culture*, 14(3): 557-582.

⁴ Bryden, J. and Geisler, C. (2007). ‘Community-based Land Reform: Lessons from Scotland.’ *Land Use Policy*, 24(1): 24-34, 24.

⁵ Hirtz, F. (1998). ‘The Discourse that Silences: Beneficiaries’ Ambivalence towards Redistributive Land Reform in the Philippines.’ *Development and Change*, 29(2): 247-275, 249.

⁶ Crocombe, R. (1971). ‘Land Reform: Prospects for Prosperity.’ In Crocombe, R. (ed.) *Land Tenure in the Pacific*. Melbourne, Oxford University Press. 375-400, 375.

⁷ Adams, M.E. (1995). *Land Reform: New Seeds on Old Ground?* London, Overseas Development Institute.

These different ways in which actors conceptualise and explain land reform, ranging from technical approaches to poverty alleviation and productive efficiency, point to some of the complexities – and the competing interests and agendas – involved in the study of land reform.⁸ They contribute to shaping the debate over land reform in the Pacific between supporters of land reform and the defenders of customary land. This debate is driven mainly by neoliberal economic arguments, as articulated by Helen Hughes, drawing on De Soto's advocacy for individualising land tenure to facilitate economic development.⁹ Hughes has argued that customary land tenure systems should be replaced with a private property rights regime because they hinder development.¹⁰ Arguments such as these have been shaped by the evolution of property rights theory which place particular emphasis on private property as the driver for economic development.¹¹ On the other side of the debate are Jim Fingleton and others, who argue that land reform should provide for both group and individual registration of customary land.¹² The focus of land reform should be on the adaptation of

⁸ For discussion on the types of land reform see for example: Simpson, S.R. (1962). 'Land Reform and Procedure.' *Journal of Administration Overseas*, 1(0): 84-87.

⁹ Hughes, H. (2010). 'Aid has Failed the Pacific: The Pacific 2010: Revisited.' *Pacific Economic Bulletin*, 25(3): 232-234; Hughes, H. (2004). 'Can Papua New Guinea Come Back from the Brink?' *Issues Analysis* No. 49. Sydney, Centre for Independent Studies; Hughes, H. (2004). 'The Pacific is Viable!' *Issues Analysis* No. 53. Sydney, Centre for Independent Studies; De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York, Basic Books; Gosarevski, S., Hughes, H., and Windybank, S. (2004). 'Is Papua New Guinea viable?' *Pacific Economic Bulletin*, 19(1):134-48; Gosarevski, S., Hughes, H., and Windybank, S. (2004). 'Is Papua New Guinea viable?' *Pacific Economic Bulletin*, 19(3):133-36.

¹⁰ Hughes, H. (2003). 'Aid has Failed the Pacific.' *Issues Analysis* No 33. Sydney, Centre for Independent Studies.

¹¹ For similar comment see McDonnell, S. (2016). *My Land, My Identity: Power, Property and Identity in Land Transformations in Vanuatu*. Australian National University, PhD Thesis, 254. For literature on evolution of property rights see for example: Platteau, J-P. (1996). 'The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: Critical Assessment.' *Development and Change*, 27(1): 29-86.

¹² Fingleton, J. (2004). 'Is Papua New Guinea Viable Without Customary Groups?' *Pacific Economic Bulletin*, 19(2): 96-103. See the collection of papers in Fingleton, J, (ed.) (2005). *Privatising Land in the Pacific: A Defence of Customary Tenures*. Canberra, The Australian Institute; for similar view see also

customary land rather than its abolishment.¹³ While the Hughes argument against customary land tenure has been strongly rebutted and criticised as a mistranslation of De Soto's work, the neoliberal idea of a privatised property rights regime continues to shape how actors perceive customary land and frame land reform narratives and initiatives in Melanesia.¹⁴

In general terms, land reform refers to any process designed to change landholding arrangements in order to improve the lives of those who use the land as well as to facilitate economic development.¹⁵ In practice, emphasis tends to fall on the second rather than the first of these objectives. Such a process involves changes to the land laws of a country in support of policy directed in the first instance at economic development. Hence, it is possible to assert, along with Patrick McAuslan and Ambreena Manji, that land reform has come to mean land law reform because it is seen to be primarily about the enactment of law to change the relations that people have with land.¹⁶ The gathering focus on the enactment of law – how law is actually drafted and by whom, and how and by whom it is implemented – has reawakened an interest in the role of individual actors, who are now understood to play a key role in influencing the development of land law through their transmission and interpretation

Government of Papua New Guinea. (1973). Report of the Commission of Inquiry into Land Matters. Port Moresby, Government Printer.

¹³ A similar view was discussed in FAO (Food and Agriculture Organisation). (2002). *Law and Sustainable Development since Rio: Legal Trends in Agriculture and Natural Resource Management*. Rome, Food and Agriculture Organisation of the United Nations, 223.

¹⁴ Fingleton, J. (2005). 'Introduction.' In Fingleton, J (ed.) *Privatising Land in the Pacific*, 1-5; see also McDonnell, My Land, My Identity, 254-255.

¹⁵ Simpson, 'Land Reform and Procedure', 84.

¹⁶ McAuslan, P. (1998). 'Making Law Work: Restructuring Land Relations in Africa.' *Development and Change*, 29(3): 525-552; and Manji, A. (2003). 'Commodifying Land, Fetishising Law: Women's Struggles to Claim Land Rights in Uganda.' *The Australian Feminist Law Journal*, 19(1): 81-92.

of western legal norms. Under these terms, land reform emerges as a fundamentally spatial project that is political and driven by particular actors.¹⁷

A common theoretical justification advanced by proponents of land reform is based on the argument that land reform provides secure property rights for farmers, tenants and the poor. It enables them to invest their labour and capital in order to increase productivity for capitalist development.¹⁸ These provisions, as described by Anne-Sophie Brasselle and others, have ‘assurance’, ‘realizability’ and ‘collateralisation’ effects on property rights.¹⁹ For example, Awudu Abdulai and colleagues draw on data collected from villages in the Brong Ahafo region of Ghana, to argue that ‘farmers who owned land with secured tenure were more likely

¹⁷ For individual actors see Heath, I.C. (1974). Charles Morris Woodford of the Solomon Islands: A Biographical Note, 1852-1927. Australian National University, MA Thesis; Heath, I.C. (1981). Land Policy in Solomon Islands. La Trobe University, PhD Thesis; Larmour, P. (1987). Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policymaking and Implementation before and after Independence in Papua New Guinea, Solomon Islands and Vanuatu. Macquarie University, PhD Thesis; Larmour, P. (2002). ‘Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.’ *Public Administration and Development*, 22(2): 151-161; Larmour, P. (2005). *Foreign Flowers: Institutional Transfer and Good Governance in the Pacific Islands*. Honolulu, University of Hawai'i Press; Lawrence, D.R. (2014). *The Naturalist and his 'Beautiful Islands': Charles Morris Woodford in the Western Pacific*. Canberra, Australian National University Press. For a study of the relationship between land reform, space and power see Greenberg, S.J. (2011). Land Reform, Space and Power in Makhado Municipality, Limpopo, South Africa. University of Sussex, PhD Thesis; see also Butler, C. (2003). Law and the Sociological Production of Space. Griffith University, PhD Thesis.

¹⁸ For research in support of this theoretical position see Besley, T. (1995). ‘Property Rights and Investment Incentives: Theory and Evidence from Ghana.’ *Journal of Political Economy*, 103(5): 903-937; see also De Soto, *The Mystery of Capital*; Jacoby, H.G., et al. (2002). ‘Hazards of Expropriation: Tenure Insecurity and Investment in Rural China.’ *American Economic Review*, 92(5): 1420-1447; and Carter, M.R. and Olinto, P. (2003). ‘Getting Institutions ‘Right’ for Whom? Credit Constraints and the Impact of Property Rights on the Quantity and Composition of Investment.’ *American Journal of Agricultural Economics*, 85(1): 173-186.

¹⁹ Brasselle, A.S., et al. (2002). ‘Land Tenure Security and Investment Incentives: Puzzling Evidence from Burkina Faso.’ *Journal of Development Economics*, 67(2): 373-418, 374; this matches closely with the work by Place and Swallow on exclusivity, security and transferrable as the key elements of property right: Place, F. and Swallow, B. (2000). ‘Assessing the Relationship between Property Rights and Technology Adoption in Smallholder Agriculture: A Review of Issues and Empirical Methods.’ *CAPRI Working Paper 2*. Washington DC, International Food Policy Research Institute.
<http://ageconsearch.umn.edu/bitstream/55438/2/capriwp02.pdf> (Accessed 23/8/2015).

to invest in tree planting, mulch, manure, but not in mineral fertilizer'.²⁰ But, as revealed by a number of other studies from Africa, the size of the farm, type of investment and nature of the land tenure system strongly determine the extent to which farmers with secure property rights do invest.²¹

The aim of land reform is to facilitate and secure property rights through land titling in order to encourage investment. However, considerable empirical research, particularly in sub-Saharan Africa, has shown how land reform along these lines failed during the 1970s and 1980s. Essentially, these land reforms failed to achieve their intended outcomes, such as improved access to credit, increased productivity and poverty reduction.²² Research on land reform in the Pacific also shows that past land reform initiatives did not result in improved productivity or improved access to credit finances.²³ One way of understanding this history of successive failures at land reform is to study the role of actors and their networks.

In Solomon Islands, actors at the national and provincial level commonly equate land reform with land recording and land registration. This is not unique to Solomon Islands because, as pointed out by Charles Yala, in the Melanesian context 'land reform is predominantly

²⁰ Abdulai, A., et al. (2011). 'Land Tenure Differences and Investment in Land Improvement Measures: Theoretical and Empirical Analyses.' *Journal of Development Economics*, 96(1): 66-78, 76.

²¹ James Fenske's research on West Africa: Fenske, J. (2011). 'Land Tenure and Investment Incentives: Evidence from West Africa.' *Journal of Development Economics*, 95(2): 137-156; this is similar to the research findings of Awudu Abdula et al: Abdulai, A., et al, 'Land Tenure Differences and Investment in Land Improvement Measures'.

²² Peters, P.E. (2009). 'Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions.' *World Development*, 37(8): 1317-1325.

²³ Crocombe, 'Land Reform: Prospects for Prosperity'; and Yala, C. (2008). 'Improved Access to Finance through Land Titling: Evidence from the Hoskins Smallholder Oil Palm Project.' *Pacific Economic Bulletin*, 23(1): 39-59.

interpreted to mean registration of customary land'.²⁴ Many Solomon Islanders including political leaders interpret land reform in two ways, referring either to customary land recording and registration under a state-based system, or to the redistribution of alienated land to address the historical dispossession of original landowners from their land. These variable perceptions of land reform in Solomon Islands are not clearly distinguished either in policy design or in the narratives articulated by national and local actors. In Solomon Islands, as elsewhere in Melanesia and beyond, the explicit emphasis of recent land reform programs has been on 'unlocking the potential' of land held under customary tenure.²⁵ This is because it is assumed that some mechanism is required to realise the full commercial or development potential of the land. However, land reform programs initiated in this way at the national level are seldom adequately linked with land reform principles promoted at either the regional or international levels.

Land adjudication and registration are commonly identified by politicians and agents of the state as appropriate mechanisms for opening up land for capitalist development. However, these mechanisms not only open up or unlock land for development but also register it (or perhaps lock it up) within a state-based property rights system, profoundly impacting on the relationship people have to the land. The narratives promoted by those actors driving land

²⁴ Yala, C. (2006). 'Rethinking Customary Land Tenure Issues in Papua New Guinea.' *Pacific Economic Bulletin*, 21(1): 129-137, 129.

²⁵ For narratives on unlocking or opening up customary land for development see: Chand, S. (2009). 'The Pacific Can Learn from PNG's Land Reform.' *Pacific Islands Report*, 7 May; Editor. (2011). 'Solomon Islands Undertake Crucial Land Reforms.' Solomon Times Online, 11 May, <http://www.solomontimes/news/solomons-islands-unders-crucial-land-reforms/6110> (Accessed 2/24/2015); Dawea, E. (2014). 'UDP: Land Reform Important to Boost Economy.' *Solomon Star*, 28 October; Dawea, E. (2015). 'Veke Echoes PM's Call to Landowners.' *Solomon Star*, 12 January; Namosuaia. D. (2015). 'Customary Land Tops DCC's list.' *Solomon Star*, 30 January; see also Hughes, 'Aid has Failed the Pacific', and Yala, 'Rethinking Customary Land Tenure Issues in Papua New Guinea'.

reform in Melanesia tend to focus on conversion of customary land to create property rights rather than on improvements to the existing customary land arrangement. That is, customary land is considered by supporters of land reform as suitable for modern economic development through leasing if it is adjudicated and registered.²⁶ As a result, it is seldom clear what either Solomon Islanders or Melanesian leaders and policy makers mean when they talk about land reform. Land reform is commonly associated with the registration of customary land, but without any clear policy expression of whether customary land once registered would remain the same or become a freehold estate or a perpetual estate with indefeasibility of title.²⁷

1.2 Research Questions and Contribution

In this thesis, my research questions are shaped by a strong sense of the significant role played by individual actors in land reform. The following questions have grounded my explanation and interpretation of the roles and backgrounds of these actors within the historical trajectory of land reform in Solomon Islands:

- a) What have been the factors cited in promoting ‘land reform’?
- b) Who have been the key actors, and in what ways have they influenced land reform in Solomon Islands?
- c) In what ways has land reform impacted on property and land rights in Solomon Islands?
- d) Why and how has land reform in Solomon Islands failed to achieve its various goals?

²⁶ Ruiping Ye makes a similar observation for Samoa: Ye, R. (2009). ‘Torrens and Customary Land Tenure: A Case Study of the Land Titles Registration Act 2008 of Samoa.’ *Victoria University of Wellington Law Review*, 40(4): 827-861.

²⁷ Ye, ‘Torrens and Customary Land Tenure.’

- e) How might an understanding of the history of land reform contribute to our knowledge about its theoretical conceptualisation and implementation from the international to the local levels?

There has been no previous research for Solomon Islands or elsewhere in Melanesia that has adopted an explicitly multi-disciplinary approach to the examination and analysis of actor roles around land reform. Nor is there much recent literature focusing on actors engaged in the formal and informal processes and institutional layers that have an impact on land reform in Melanesia. Literature on the broader correlation between historical processes, notions of property and customary tenure as a basis for adequately informing policy debates on the national scale is similarly lacking.²⁸

1.3 Approaching Land Reform in Solomon Islands

I wrote this thesis because as a Solomon Islander I want to see better approaches to land reform in my country. In doing so, I seek to make a contribution to the existing body of literature on land reform in Melanesia, and to provide a significant platform for governments and other stakeholders in Solomon Islands and other South Pacific countries to re-evaluate land reform and identify appropriate strategies to deliver more effective reform.

I developed an interest in land reform due to personal and professional factors. First, as a Malaitan and a Solomon Islander, I know that land is central to identity, to custom, to

²⁸ Crocombe, 'Land Reform: Prospects for Prosperity'; Larmour, 'Policy Transfer and Reversal'; Larmour, *Foreign Flowers*; Allen, M.G. (2008). Land Reform in Melanesia. *State Society and Governance in Melanesia, Briefing Paper* No. 6. Canberra, ANU, 1-5; Yala, C. (2011). 'A Political Economy Analysis of the Customary Land Tenure Reforms in Papua New Guinea.' In Duncan, R. (ed), *The Political Economy of Economic Reform in the Pacific*. Philippines, Asian Development Bank, 33-62.

security and to economic development;²⁹ land is the single most important issue confronting Solomon Islanders, now and in the future. Second, I spent eight years (2004-2011) teaching property law and Pacific land tenure law at the University of the South Pacific. During this period, I was also involved in a number of research projects relating to land issues, funded by the World Bank, donor agencies such as the Australian Agency for International Development (AusAID), and the Solomon Islands government. The research I was involved in with the World Bank was on access to advisory services by customary land owners before signing agreements in the forestry, mining, fisheries and land sectors in Solomon Islands. The AusAID funded research was on circuit courts in Solomon Islands. For the Solomon Islands government, I undertook research on various land issues relating to both urban and customary land. At the community level, I have also engaged with NGOs and local actors and landowners in running workshops and awareness programs on land issues in Solomon Islands.

Through this engagement with land I have become aware of the continued failure of land reform programs, the limitations of transferring models from other jurisdictions, and the apparent refusal to consider what is happening regionally and to seriously engage with the necessary range of stakeholders. My experience of working in these different domains led me to the realisation that there are inadequate linkages between the narratives on land reform at the international, regional, national and local levels. Only more recently has there been some shift in these otherwise entrenched approaches to land reform: in 2015 I became

²⁹ For a similar explanation regarding the importance of land to a customary landowner see for example: Farran, S. (2011). 'Navigating Between Traditional Land Tenure and Introduced Land Laws in Pacific Island States.' *Journal of Legal Pluralism and Unofficial Law*, 43(64): 65-90.

involved in a project on pathways to land reform in Solomon Islands, commissioned by the Australian Government's Department of Foreign Affairs and Trade (DFAT), through the Australian National University's "State, Society and Governance in Melanesia" (SSGM) program.

The project was led by Siobhan McDonnell, who worked with Vanuatu Lands Minister Ralph Regenvanu on his land reform package from 2013-2015. This research project, which was not large in scale, sought to engage with and learn from the key actors involved in the process of land reform across the region, and produced a report entitled 'Building a pathway for successful land reform in Solomon Islands'. The report was launched at a national land reform conference in August 2015, which included both Solomon Islanders and regional participants such as Minister Regenvanu who talked about the Vanuatu land reform package. What was striking about this event was the extent to which the debate was now being conducted primarily amongst Melanesians, even if the terms of debate continue to reproduce the traditional cleavage between those who promote unlocking land for economic development and those who want to preserve customary land tenure systems and are worried about the scale of registration of customary land.

As a lawyer, lecturer at the University of the South Pacific, researcher, PhD candidate at one of Australia's most prestigious universities and a Solomon Islander, I have been able to move between these different domains of power, to engage in conversations around land reform as well as access information and informants who have all contributed to this thesis. While I was born into the local and national context, where my father had been a national and provincial politician for almost two decades, I have been able to move between the

global and regional levels because of my access to education opportunities. I have navigated my way between these domains of power through professional and personal networks, which can be challenging at times but also interesting because I have been able to engage with a wide range of different actors at both theoretical and practical levels.

My personal and professional experience in the politics, policy and practice of land reform has led me to adopt a multi-disciplinary research approach drawing widely on law, history, anthropology, sociology, geography, economics and development studies. While my background is firmly as a lawyer, I draw on these different scholarly disciplines because I feel that law alone is insufficient to understand why land reform legislation never achieves its goals. Such an approach is necessary because land reform in Melanesia, as elsewhere, is shaped by historical processes mediated through spatial relationships between landowner and the state, along with cultural aspects of land, law and development.

The challenge of this approach has been twofold: first, how to demonstrate that the knowledge I generate from my research might be relevant and useful in Solomon Islands, elsewhere in the South Pacific region and beyond. I feel it is necessary to demonstrate the relevance of the knowledge I acquire from my research as an attempt to bridge the gap between my roles as a researcher and land reform practitioner. Second, how to ensure that the information and material I generate from the research is rigorous and accurate.³⁰ I find

³⁰ There is an extensive literature on the research relevance and rigour debate, see for example: Gulati, R. (2007). 'Tent Poles, Tribalism, and Boundary Spanning: The Rigor-Relevance Debate in Management Research.' *The Academy of Management Journal*, 50(4): 775-782; Markusen, A. (2003). 'Fuzzy Concepts, Scanty Evidence, Policy Distance: The Case for Rigour and Policy Relevance in Critical Regional Studies.' *Regional Studies*, 37(6-7): 701-717; Mays, N. and Pope, C. (1995). 'Qualitative Research: Rigour and Qualitative Research.' *British Medical Journal*, 311(July 8, 6997): 109-112; Krefting, L. (1991). 'Rigor in Qualitative Research: The Assessment of Trustworthiness.' *American Journal of Occupational Therapy*, 45(3): 214-222.

this a challenge because not all of the information and material that I wanted to access was readily available. Despite this challenge, I consulted my professional and personal networks to cross check that what I have written is accurate. As a Solomon Islander writing about land in Solomon Islands, my reputation is very much at stake and I can and will be held accountable for the accuracy of my writing by national and local actors.

I have sought to adopt a broadly interpretivist angle for my thesis, based on the ‘ontological conviction that actions and practices are shaped by ideas held individually and collectively about the world’.³¹ My leaning towards an interpretivist position to understand the background and role of actors is far from unique. Scholars such as Jack Corbett have explained and applied an interpretivist approach, and their work has provided an essential platform informing my sense of what and how I need to know about the role of actors in land reform. What this means in practice is that I seek to understand how actors perceive and ‘produce the world by exploring how meanings, beliefs and traditions inform their actions and practices’.³² In other words, people’s understanding of reality is a social construction, which is inevitably subjective.³³ This understanding is ‘negotiated within cultures, social settings, and relationships with other people’; thus the truth is constantly negotiated and ‘there can be multiple, valid claims to knowledge’.³⁴

³¹ Corbett, J. (2013). ‘Shifting Sands: Interpreting ‘Developmental’ Leadership in the Pacific Islands.’ *Forum for Development Studies*, 40(3): 491-509, 493.

³² Corbett, ‘Shifting Sands: Interpreting ‘Developmental’ Leadership in the Pacific Islands’, 494.

³³ Chowdhury, M.F. (2014). ‘Interpretivism in Aiding our Understanding of the Contemporary Social World.’ *Open Journal of Philosophy*, 4(3): 432-438, 433.

³⁴ Cohen, D. and Crabtree, B. (2006). ‘Qualitative Research Project Guidelines Project.’ *The Interpretivist Paradigm*, Robert Wood Johnson Foundation. <http://www.qualres.org/HomeInte-3516.html> (Accessed 24/2/2016).

My inclination towards an interpretivist approach is also shaped by my conviction in the importance of the background and role of actors in explaining why land reform remains an ongoing challenge in Solomon Islands. Thus my mode of research is largely qualitative in nature, given that how actors work is both a cause and an effect of the social world that comprises the feelings, observations and attitudes which influence the state's policy framing of land reform. This thesis is a study of specific actor roles in particular land reform programs rather than an attempt to establish universal truths about land reform. Hence, I seek to understand the motives of Charles Morris Woodford, as the first Resident Commissioner in Solomon Islands, in introducing waste land regulation. Why did the colonial government elect to introduce land settlement schemes in the 1960s? The answers to these and other questions in this thesis may be largely subjective but they are central to understanding the factors influencing land law reform in Solomon Islands.

1.4 Actors, Actor Network Theory and the Enactment of Property

As Nicholas Blomley asserts, property is an enactment that happens not only in courtrooms but is also put to work on material spaces and real people.³⁵ He explains that this takes place through territorial enactments such as the conduct of surveys, drawing of maps, development of land, building of fences and the deployment of violence. These various enactments are all linked together through the relationship between property and space, which is 'also implicated in "wider" networks of power relations, such as a capitalist land market or processes of colonization'.³⁶ Blomley's work provides a useful reference point for analysing

³⁵ Blomley, 'Mud for the Land,' 557; see also Blomley, N.K. (2003). 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid.' *Annals of the Association of American Geographers*, 93(1): 121-141.

³⁶ Blomley, N.K. (1998). 'Landscapes of Property.' *Law and Society Review*, 32(3): 567-612, 570.

change in the nature of land to a proprietary commodity through the introduction of land laws by colonial actors, and the ways in which this may have shaped approaches to post-Independence land reform in Solomon Islands.

As this thesis will show, land reform was part of the colonial and post-colonial project of transforming ‘uncivilised’ into ‘civilised’ (or ‘under-developed’ into ‘developed’) people, and the enactment of property rights is central to this desired trajectory. State land law as a product of land reform was a critical tool in the attempts by colonial administrations to control and transform customary land into property rights for economic development.³⁷ Individual actors played an important role in these initiatives, and approaching actor roles and networks through an interpretivist lens has the potential to provide insight into the details of colonial and post-colonial enactments of property rights.

This thesis takes a multidisciplinary socio-legal, geographical and historical approach to the study of land reform. I seek to understand how and why land reform has continued to be an ongoing challenge in Solomon Islands over more than a century. My research is centred on those key actors – individuals and institutions – who have exerted direct influence on the nature and course of land reform in Solomon Islands. As Gilling observes, the study of actors is important because, ‘One of the central issues in the study of any institution or process is the role of influential individuals within it’.³⁸ Table 1 lists the individuals and institutions whose actions and attitudes provide the primary material for my analysis.

³⁷ Monson, Hu Nao Save Tok?, 84.

³⁸ Gilling, B.D. (1994). ‘Engine of Destruction: An Introduction to the History of the Maori Land Court.’ *Victoria University Wellington Law Review*, 24(2): 115-139, 118.

There is a considerable body of literature, particularly from Africa, that shows precisely how land tenure conversion contributes to further social inequality. In Solomon Islands and elsewhere in the South Pacific I have found that research on land reform seldom addresses the role of individual actors and their roles in shaping questions of social inequality in relation to land reform. At the regional level I have come across only the work of two scholars looking at actors in relation to land: John Kelly, who considered the life of Sir Arthur Gordon in Fiji, and Peter Larmour who identified many of the actors that had been involved in land policy transfer from Africa to Solomon Islands during the post-WWII era.³⁹ At a global level, the literature on actors and networks in relation to land reform focuses largely on Africa.⁴⁰ Informed by this literature, my research examines actors and their networks by tracing how they have drawn on their experiences and ideas from elsewhere to shape land reform processes in Solomon Islands.

This thesis draws attention to the roles played by key actors within a long historical trajectory of land law reform in Solomon Islands to demonstrate how these roles and networks influence outcomes and how land reform operates in practice. While there are various theoretical interpretations of actor roles and networks, I draw on Actor Network Theory (ANT) as developed by Bruno Latour as the principal frame for my focus on key actors.⁴¹ However,

³⁹ Kelly, J.D. (2004). 'Gordon Was No Amateur: Imperial Legal Strategies in the Colonization of Fiji.' In S. Merry, E. and Brenneis, D. (eds), *Law and Empire in the Pacific: Fiji and Hawai'i*. Oxford, James Currey Publishers, 61-100; Larmour, 'Policy Transfer and Reversal'.

⁴⁰ McAuslan, P. (2003). *Bringing the Law Back in: Essays in Land, Law, and Development*. England, Ashgate Publishing Limited; Manji, A. (2005). 'Cause and Consequence in Law and Development - Bringing the Law Back In: Essays in Land, Law and Development by Patrick McAuslan (Review).' *Journal of Modern African Studies*, 43(1): 119-138; Manji, A. (2006). *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*. London and New York, Zed Books.

⁴¹ Latour, B. (2005). *Reassembling the Social: An Introduction to Actor-Network-Theory*. Oxford, Oxford University Press.

the central focus of this thesis is not ANT but rather the study of a set of historical actors, and how their approaches to land reform were shaped by their conceptual frames and perceptions. This focus on actors enables a range of insights into how land reform is perceived, conceptualised and enacted. One of the more important insights is the way in which network and background have shaped the thinking of individual actors.

My approach has also been inspired by a reading of Ambreena Manji's 2006 book *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets* on the role of legal consultants and the networks of land law reform in Africa.⁴² As Manji points out, 'little is known about the everyday work of lawyers, and in particular of the efforts of legal consultants, in land reform. A detailed anthropological study of their role awaits an author'.⁴³ Although Manji's statement is made in relation to African contexts, it speaks to the gap in the literature on analysing actor roles in land reform in Solomon Islands and elsewhere in the South Pacific.

The core observation of ANT is that actors can be both humans – individual or collective – and objects in the form of actants (see Chapter 2), and that the lives and actions of individuals, groups and institutions can be tracked or followed. The theorising of actors as humans and institutions grounds my conceptualisation and interpretation of actors as influential individuals together with institutions such as the World Bank, regional organisations and donors. While I am aware of the broad range of actors involved in land reform work, my focus here will be on certain key individuals and their interpretation of reality as a factor in

⁴² Manji provides an account of Patrick McAuslan's role as one of the key actors in land law reform in Africa see: Manji, 'Cause and Consequence in Law and Development'.

⁴³ Manji, *The Politics of Land Reform in Africa*, 78.

shaping land reform to illustrate the broader point that background and networks matter. I consider these actors influential not only in terms of their roles but also their approaches to land issues, which have contributed to shaping land policy and reform in Solomon Islands.

1.5 Land Reform and Development

Global discourses on land reform continue to shape debates at regional and national levels. Such debate, as Martin Adams points out, problematises customary land as an obstacle for development in Melanesia.⁴⁴ It is frequently observed that the majority of land in Solomon Islands and elsewhere in the South Pacific is under customary tenure, with ownership rights typically vested in groups such as tribes, clan or extended families.⁴⁵ This is often perceived as a problem by proponents of land reform due to lack of clear title and free-rider issues associated with a global common.⁴⁶ The remaining portion of land is very small, whether categorised as public or leasehold land or freehold.⁴⁷ These latter categories of land have been created and regulated by the state through a long historical process of land alienation shaped by successive changes to land law. These reforms have tended to focus on converting

⁴⁴ Adams, *Breaking Ground: Development Aid for Land Reform*. London, Overseas Development Institute, 2; see also the discussion by Satish Chand and Ron Duncan of these problems: Chand, S and Duncan, R. (1997). 'Resolving Property Issues as a Precondition for Growth: Access to Land in the Pacific Islands.' In Larmour, P (ed), *The Governance of Common Property in the Pacific Region*. Canberra, ANU Press, 33-46.

⁴⁵ AusAID (2001). Undertaking Land Administration Projects: Sustainability, Affordability, Operation Efficiency and Good Practice Guidelines, *Quality Assurance Series* No. 26 of 2001. Canberra, Australian Agency for International Development; Monson, Hu Nao Save Tok?, 1-2; see also Corrin, J.C. (2012). 'Customary Land in Solomon Islands: A Victim of Legal Pluralism.' *Revue Juridique Polynésienne*, 12(Special Issue): 277-305.

⁴⁶ Chand and Duncan, 'Resolving Property Issues as a Precondition for Growth', 36.

⁴⁷ AusAID's *Making Land Work* report states that customary land makes up 87% of Solomon Islands total land area, 97% of Papua New Guinea's total land area, and 98% of Vanuatu's total land area: AusAID. (2008). *Making Land Work, Vol. I: Reconciling Customary Land and Development in the Pacific*. Canberra, Australian Agency for International Development (AusAID), 4.

customary land to a state-based property system through mechanisms such as land adjudication and registration for development.⁴⁸ The goal of these reforms has been to encourage landowners perceived as poor to register their land in order to gain access to credit facilities for the purpose of engaging in commercial farming.

In Solomon Islands, the majority of people who may be considered poor in monetary terms are subsistence farmers who are members of autonomous customary landholding groups. Despite this difference, debate over land reform in Solomon Islands is driven by notions of registering land as a necessary step in a process which Ian Scales describes as ‘peasantising the local population’, with a particular emphasis on the use of land as collateral for finance or as a commodity for sale or lease.⁴⁹ As elsewhere in the South Pacific and in other developing countries, political interest in land reform in Solomon Islands continues to be shaped by the neoliberal narrative of property law and land rights as the basis for driving productivity and capitalist development. A large body of scholarly work has demonstrated how such neoliberal narratives shape land reform approaches in developing countries in

⁴⁸ Adams, *Breaking Ground*, 2.

⁴⁹ Scales, I. (2003). *The Social Forest: Landowners, Development Conflict and the State in Solomon Islands*. Australian National University, PhD Thesis, 127.

Africa,⁵⁰ Latin America,⁵¹ Asia⁵² and former socialist countries in Europe.⁵³ These studies show how such approaches have evolved from an emphasis on state intervention focused on land redistribution during the colonial era to a market-oriented land reform process from the late 1980s;⁵⁴ only since about 2000 have a few countries begun to shift towards a community-based land reform process.⁵⁵

The goal of making customary land secure and available for everyone, particularly for capitalist development, has been the central conceptual frame drawn on by many proponents of land reform in Solomon Islands and elsewhere in the South Pacific region. This is influenced by political narratives about land reform shaped by debates about state-sanctioned

⁵⁰ Obeng-Odoom, F. (2012). 'Land Reforms in Africa: Theory, Practice, and Outcome.' *Habitat International*, 36(1): 161-170; Sender, J. and Johnston, D. (2004). 'Searching for a Weapon of Mass Production in Rural Africa: Unconvincing Arguments for Land Reform.' *Journal of Agrarian Change*, 4(1-2): 142-164; Pinckney, T.C. and Kimuyu, P.K. (1994). 'Land Tenure Reform in East Africa: Good, Bad or Unimportant?' *Journal of African Economies*, 3(1): 1-28.

⁵¹ Deininger, K. (1999). 'Making Negotiated Land Reform Work: Initial Experience from Brazil, Colombia, and South Africa.' *Research Working Papers*, 1(1): 1-37; De Janvry, A. and Sadoulet, E. (1989). 'A Study in Resistance to Institutional Change: The Lost Game of Latin American Land Reform.' *World Development*, 17(9): 1397-1407; Cline, W.R. (1970). *Economic Consequences of a Land Reform in Brazil*. Amsterdam, North-Holland Publishing Co.

⁵² Apthorpe, R. (1979). 'The Burden of Land Reform in Taiwan: An Asian Model Land Reform Re-analysed.' *World Development*, 7(4): 519-530; Upton, C. (2009). "'Custom" and Contestation: Land Reform in Post-Socialist Mongolia.' *World Development*, 37(8): 1400-1410; Ladejinsky, W. (1960). 'Land Reform in Japan.' *The Journal of Modern History*, 32(1): 28-31; Williamson, M.B. (1951). 'Land Reform in Japan.' *Journal of Farm Economics*, 33(2): 169-176; Mitchell, C.C. (1949). 'Land Reform in South Korea.' *Pacific Affairs*, 22(2): 144-154; Besley, T. and Burgess, R. (2000). 'Land Reform, Poverty Reduction, and Growth: Evidence from India.' *Quarterly Journal of Economics*, 115(2): 389-430.

⁵³ Ho, P. and Spoor, M. (2006). 'Whose Land? The Political Economy of Land Titling in Transitional Economies.' *Land Use Policy*, 23(4): 580-587.

⁵⁴ Bernstein, H. (2002). 'Land Reform: Taking a Long(er) View.' *Journal of Agrarian Change*, 2(4): 433-463; Lipton, M. (1993). 'Land Reform as Commenced Business: The Evidence against Stopping.' *World Development*, 21(4): 641-657.

⁵⁵ Scotland provides an example of emphasis on a community-based land reform program: Brown, K.M. (2007). 'Reconciling Moral and Legal Collective Entitlement: Implications for Community-based Land Reform.' *Land Use Policy*, 24(4): 633-643; Bryden, and Geisler, 'Community-based land reform'.

individualised property rights versus ideas of customary land holdings. Numerous studies on land reform place particular emphasis on a formalised property system to facilitate economic development. These studies, mainly from Africa, stress that the rationale for land reform is that it creates improved access to land ownership and credit markets, which can contribute to poverty reduction.⁵⁶ The literature on land reform in Melanesia is dominated by research in Papua New Guinea, and by the argument that land reform is vital for economic development because it improves access, use and transfer of land ownership to individuals, investors and others.⁵⁷ The common theme that seems to run through much of this literature is that land reform is viewed in ‘state-centric terms’.⁵⁸

1.6 Land Reform in Solomon Islands

Solomon Islands is a nation of islands in the southwest Pacific, parts of which the British government declared a protectorate in 1893, gradually extending their control until 1900.⁵⁹ The declaration of protectorate status reflected the primary concern of providing protection to British subjects. This protectorate status provided the legal basis for the British government to ‘secure her subjects’ trading rights, to exercise some control over the activities

⁵⁶ Deininger, ‘Making Negotiated Land Reform Work’; and Obeng-Odoom, ‘Land Reforms in Africa’.

⁵⁷ Yala, C. (2006). ‘Rethinking Customary Land Tenure Issues in Papua New Guinea.’ *Pacific Economic Bulletin*, 21(1): 129-137; Chand, S. and Yala, C. (2009). ‘Land Tenure and Productivity: Farm-level Evidence from Papua New Guinea.’ *Land Economics*, 85(3): 442-453; Yala, ‘A Political Economy Analysis of the Customary Land Tenure Reforms in Papua New Guinea’; Chand, S. and Yala, C. (2012). ‘Institutions for Improving Access to Land for Settler-housing: Evidence from Papua New Guinea.’ *Land Use Policy*, 29(1): 143-153; Fairhead, L., Kauzi, G. and Yala, C. (2010). Land Reform in Papua New Guinea: Quantifying the Economic Impacts, Discussion Paper No. 108. Boroko, Papua New Guinea, National Research Institute.

⁵⁸ Bryden and Geisler, ‘Community-based Land Reform’.

⁵⁹ Wolfers, E. (1971). ‘The Significance of the Protectorate Status.’ *Institute of Current World Affairs*, 3. Online <<http://www.icwa.org/wp-content/uploads/2015/09/EPW-29.pdf>> (Accessed 2/21/2016).

of her subjects [and] to prevent another European power from claiming sovereignty’, as well as address the issue of securing the supply of indentured labour to the colony of Queensland.⁶⁰ An important element of the process of bringing Solomon Islands as an uncivilised territory under the protection of the British government was the enactment of property rights through the conversion of customary land to state-based arrangements.

The British sought to transform Solomon Islands into a civilised area through the enactment of property rights.⁶¹ Charles Morris Woodford, the first Resident Commissioner and an actor whom I discuss in Chapter 3, played a key role in this process through three principal ways. First, he contributed to shaping the legislative framework for land alienation, to encourage British subjects to invest in large scale plantations.⁶² Second, this provided the legal impetus for the British colonial government to assume ownership of all unoccupied land in the Protectorate, termed vacant land, by virtue of the Queen’s Regulation No.4 of 1896⁶³ and subsequent enactments.⁶⁴ Third, as Resident Commissioner, Woodford was responsible for determining and giving grants of long-term leases or freehold or conditional purchase to

⁶⁰ Wolfers, ‘The Significance of the Protectorate Status’; see also Allen, M.G. (2013). *Greed and Grievance: Ex-Militants’ Perspectives on the Conflict in Solomon Islands, 1998–2003*. Honolulu, University of Hawai’i Press.

⁶¹ Bennett, J.A. (2000). *Pacific Forests: A History of Resource Control and Contest in Solomon Islands, c.1800 – 1997*. Cambridge, The White House Press, 38; see also Ipo, J. (1989). ‘Land and Economy.’ In Laracy, H. (ed.) *Ples Blong lumi: Solomon Islands the Past Four Thousand Years*. Suva, IPS/USP, 121-136, 125.

⁶² Bennett, J.A. (1987). *Wealth of the Solomons: A History of a Pacific Archipelago*. Honolulu, University of Hawaii Press.

⁶³ This Regulation is cited as The Solomon (Land) Regulation 1896. Section 10 of this Regulation authorises the High Commissioner to grant leases ‘on behalf of Her Majesty of land being vacant by reason of the extinction of the original native owners and their descendants’.

⁶⁴ By 1900, the control of waste land by the Crown extended to include land that was not owned, cultivated or occupied by any native: see Queens Regulation No. 3 of 1900 as amended No. 1 of 1901, repealed and consolidated by No.2 of 1904.

generate revenue to help finance the administration of the Protectorate.⁶⁵ These actions on the part of Woodford provide a sufficient basis to assert, along with Stuart Banner, that the British recognised local people as having ownership rights but that such recognition served largely to legitimise their own political and economic interests.⁶⁶

Although they were not explicitly labelled at the time as “land reform”, the colonial British land programs focused on replacing customary land tenure with a system based on a Western construction of property rights. It was the British government’s economic interests that drove the promotion of freehold incentives for both domestic and foreign investment and an economic basis for the colonial government.⁶⁷ This historical process demonstrates the interface between the state and land market as the principal domain for the facilitation of colonial capitalist development. As I will show in Chapter 3, colonial approaches to property rights have had an ongoing impact on how Solomon Islanders relate to their lands. When Europeans were granted property rights by Woodford, acting on behalf the colonial government, in the form of freehold, occupation licence or leasehold, they felt that they could exclude others from the land, sell the land to a third party without consulting the original landowners, and import strangers to work on the land as labourers.⁶⁸ This created tensions around the use of and access to land, which triggered land grievances among Solomon

⁶⁵ Bennett, *Wealth of the Solomons*.

⁶⁶ Banner, S. (2005). *How the Indians Lost their Land: Law and Power on the Frontier*. Harvard, Harvard University Press.

⁶⁷ Freehold title was preferred to leasehold because it conferred freedom from control by the government. Freehold provided the best form of security for credit and a sense of absolute ownership: Meek, C.K. and Hailey, B.W.M.H. (1949). *Land Law and Custom in the Colonies*. Oxford, Oxford University Press, 243.

⁶⁸ Scales, *The Social Forest*, 119.

Islanders, who challenged land transactions during the early colonial era as unscrupulous. Some of these land claims are discussed in Chapter 4.

The colonial government's immediate response to these early expressions of tension over land was the enactment of the Solomon Islands Land Regulation 1914, providing a legal framework for the leasehold system.⁶⁹ This was essentially a land reform program aimed at prohibiting the direct purchase of land by British subjects from landowners, inserting the requirement of government authorisation.⁷⁰ This legal measure, however, did not put a stop to Solomon Islander land grievances. As a result, the colonial government set up a Lands Commission to hear claims from 1919-1924. Gilchrist Gibbs Alexander was the first to be appointed as Lands Commissioner in 1919, replaced by Frederick Beaumont Phillip in 1920. These two actors played a key role in determining whether land should be returned to Solomon Islanders who had been dispossessed as a result of early colonial land acquisition; their actions as Lands Commissioners powerfully shaped the subsequent development of policy and land law in Solomon Islands.

The Lands Commission operated on an ad hoc basis because there was no legal framework to guide it in verifying or confirming land claims. As I will show in Chapter 4, anyone who claimed to be dispossessed could be entitled to restitution if the validity of the claim was proven. The Lands Commission was responsible for determining its own procedure for dealing with the land claims. Although there were many claims, the Lands Commission

⁶⁹ King's Regulation No.3 of 1914. Section 3 of this Regulation provided for the repealing of The Solomons (Land) Regulation 1896 and the Solomons (Waste Land) Regulation 1904.

⁷⁰ Section 6, Solomon Islands Land Regulation 1914 stipulates that 'native land shall not be alienated by sale, gift, lease, or otherwise to non-natives'.

managed to investigate and hear only fifty-five of them, and I discuss some of these claims as case studies in Chapter 4. The recommendations of the Lands Commission were gazetted and recognised by the state.⁷¹ These recommendations then provided the legal platform for the perpetuation of land alienation.

A second Special Lands Commission was later established from 1953-1957 in order to address a substantial number of disputes and general land issues, and then make recommendations. Sir Colin Hamilton Allan was appointed Special Lands Commissioner, responsible for this work. The Commission was regarded as crucial by the colonial government because landowners had continued to challenge and oppose its policy of securing alienated land for large-scale commercial development. In particular, during the 1950s, the colonial government had targeted the Guadalcanal Plains for oil palm estates and land in the New Georgia group of islands for logging operations. Allan's role as Special Lands Commissioner was to investigate customary land issues and then produce a set of policy recommendations. His 1957 report produced findings that seemed to be informed by narratives from the work of the earlier Lands Commission, but framed in the context of theories of modernisation that had been taking shape during the 1950s (see Chapter 5).

The policy recommendations of the Special Lands Commission set the direction for subsequent colonial government attempts at land law reform in Solomon Islands. The first land law reform of 1959 was followed by three other attempts in the 1960s and 1970s. These reforms introduced land settlement schemes to facilitate agricultural development, reduce

⁷¹ Section 2, Solomons Land Claims Regulation 1923 states that the recommendation of the Lands Commission shall be binding on the parties affected by the recommendation and shall have the force of law.

land disputes, protect the rights of settlers, and encourage individual ownership of land. The land settlement schemes provided for compulsory land registration on a selected basis.⁷² These schemes were costly, and landowners were suspicious that they would result in the restriction or removal of their customary land rights. In practice, very small areas of customary land were registered, which led to the demise of the land settlement schemes. At the same time, however, land disputes persisted at an increasing rate. Chapter 6 provides a detailed consideration of the key actors involved in the land law reform attempts during this period so as to show how network and background shaped their thinking and approaches.

As Solomon Islands was moving towards Independence in 1978, the return of alienated land and economic development on customary land merged as the critical challenges confronting national leaders and policy makers. A series of committees was established during the period before independence to investigate land issues and make recommendations to the government.⁷³ Many of the findings of these committees ‘were not acted upon at a political level’.⁷⁴ Land issues formed part of the negotiations between Solomon Islander leaders who were members of the Legislative Assembly and Britain over the form of the Independence Constitution. Britain raised the issue of the future of non-Solomon Islander perpetual estates (the ‘alienated’ land). These discussions provided a number of directions for land reform initiatives to be undertaken by the newly independent Solomon Islands government.

⁷² Part IV, Land and Titles Ordinance 1969 (No.6 of 1968).

⁷³ These committees were the Governing Council Committee on Registration of Customary Land 1970-1971, Select Committee on Lands and Mining 1974-1976; and Working Party on Lands and Mining 1976-1977.

⁷⁴ Heath, I. (1979). ‘Introduction.’ In Heath, I. (ed.), *Land Research in Solomon Islands*. Solomon Islands, Lands Division, 1.

Accordingly, the Legislative Assembly passed the Land and Titles (Amendment) Ordinance 1977 to provide for the conversion of perpetual estate titles held by non-Solomon Islanders into fixed term estate leases for 75 years held from the government. This amendment cleared the path for the government to examine in detail its future policy on customary land recording and registration. Other reform measures undertaken by Solomon Islands, along with other newly independent Melanesian states during this period, involved constitutional protection for landowners as well as legislation that recognised and protected customary land by prohibiting direct land alienation to investors other than the State for a public purpose.⁷⁵ Under the Solomon Islands Constitution there was provision for land tenure conversion through a compulsory acquisition process for a public purpose.⁷⁶

There was little movement in terms of the land reform agenda during the 1980s and it was not until 1994 that the government made another attempt at land law reform. This time the government enacted legislation to provide for the voluntary recording of customary land as a legal framework for the mobilization of land for economic development. However, this legislation has never been fully operational because the structures to drive land recording are still not in place. The land reform initiative during this period was an attempt to render customary tenure as a recorded document and to ascertain ownership rights that could be translated into registered estate.

⁷⁵ Section 73 of the Vanuatu Constitution stipulates that ‘all land ... belongs to indigenous custom owners and their descendants’. This constitutional provision ‘fulfilled the political wish to redress the land grabbing of foreigners’ during the colonial era: Farran, S. (2002). ‘Land in Vanuatu: Moving Forward, Looking Backward.’ *Revue Juridique Polynésienne*, 2: 213-224, 215.

⁷⁶ Section 111 of the Solomon Islands Constitution; see also section 6 of the Land and Titles (Amendment) Ordinance 1977 for an outline of compulsory tenure conversion. This process of compulsory acquisition is now stipulated under Part V Division 2, Land and Titles Act (Cap 133).

Regional Assistance Mission to Solomon Islands (RAMSI) was deployed in July 2003 to address law and order problems caused by the civil unrest known as the ethnic tensions. RAMSI was one of the biggest rule of law interventions in the South Pacific.⁷⁷ Its success in addressing law and order issues provided the environment for the government to introduce land reform for development. In 2006, the government announced that it would embark on a land reform policy program that introduced changes to Solomon Islands land laws. The policy objective for the reform was to ‘make customary land a ‘bankable commodity’ to promote economic development.⁷⁸ This would happen through a process of land recording and registration that recognised tribes as the landholding entity. While the government was obviously conscious of the need to protect customary landowners, this policy program demonstrated the continued use of narratives that resonated with a neoliberal land reform agenda.

Part of the government’s land reform policy program involved the first application of the land recording legislation for a land recording pilot project at an oil palm estate on Malaita. This was funded by AusAID in 2007 under the Solomon Islands Institutional Strengthening of Land Administration Project (SIISLAP). This pilot was considered a success by those involved in the process of land recording, convincing key national actors to recommend that customary land recording and the codification of custom followed by land registration

⁷⁷ Kabutaulaka, T.T. (2005). ‘Australian Foreign Policy and the RAMSI Intervention in Solomon Islands.’ *The Contemporary Pacific*, 17(2): 283-308; Fraenkel, J. (2004). *The Manipulation of Custom: From Uprising to Intervention in the Solomon Islands*. Wellington, Victoria University Press; Allen, *Greed and Grievance*.

⁷⁸ World Bank. (2007). *Solomon Islands – Agriculture and Rural Development Strategy: Building Local Foundations for Rural Development*. Washington DC, World Bank, 41. < <https://openknowledge.worldbank.org/handle/10986/7757>> (Accessed 2/17/2016).

should be central to the government's land reform program, which continues to be directed towards facilitating national development projects.⁷⁹

The motivation for land reform in Solomon Islands since the 2000s is different from that in Vanuatu or Papua New Guinea although they are also Melanesian countries. In Solomon Islands the motivation for land reform since the 2000s has derived from the fact that land was a contributing factor to the Solomon Island's conflict. The government prioritised rural development as one of its 'building block for stability and peace'.⁸⁰ Central to this development priority was the making of land available through recording and registration for economic development. In Vanuatu, 'land grabbing' by expatriates, particularly from about 2002, was one of the major issues behind the push for a very different kind of land reform from customary landowners.⁸¹ The political response to address the uncontrolled leasing of customary land was led by the Malvatumauri National Council of Chiefs and the Vanuatu Cultural Centre, who jointly coordinated a National Land Summit in 2006. The Summit produced a set of land resolutions but Parliament failed to implement them. This was the catalyst for Ralph Regenvanu the then director of the Vanuatu Cultural Centre, to enter politics in 2008 as an independent Member of Parliament. When he became Minister of

⁷⁹ Cook, J. and Kofana, G.E. (2008). 'Recording Land Rights and Boundaries in Auluta Basin, Solomon Islands.' In *Making Land Work, Vol. 1: Reconciling Customary Land and Development in the Pacific*. Canberra, Australian Agency for International Development (AusAID), 47-63.

⁸⁰ Solomon Islands Government. (2007). *Solomon Islands Agriculture and Rural Development Strategy: Building Local Foundations for Rural Development*. Honiara, Ministry of Development Planning and Aid Coordination, x.

⁸¹ For a detailed account on land leases in Vanuatu granted by successive Minister of Lands from 1980-2000 see: Farran, S. (2002). 'Land Leases: Research: Ministerial Leases in Efate, Vanuatu.' *Journal of South Pacific Law*, 6(2). (Available at <http://www.vanuatu.usp.ac.fj/jspl>).

Lands in 2013-2015 he embarked on a land reform package to address the National Land Summit 2006 resolutions.⁸²

In PNG, the motivation for land reform was a government initiative due to the need to mobilize land to achieve its economic growth target of five percent per annum as prescribed by its Medium Term Development Strategy 2005-2010.⁸³ Drawing on lessons from past failed land reform programs, Papua New Guineans took charge of the land reform process. The National Research Institute of PNG, with the support of the government, organised a Land Summit in Lae in 2005, which was followed by a decision of the National Executive Council setting up a National Land Development Taskforce (NLDT) in 2006 to “identify the problems and issues relating to land administration, dispute resolution mechanisms, and how best to access customary land for development purposes”.⁸⁴ Based on the 2005 Land Summit, the National Land Development Program (NLDP) was conceived and launched by the government in 2007. The four areas covered under the NLDP were: “improving the system of land administration; improving the system of land dispute settlement; designing a framework for mobilising land held under customary title for development and developing a viable real estate market”.⁸⁵ The NLDT investigated these four areas then made 54 recommendations in its 2007 report. So far new amendments such as the Land Registration

⁸² For a detailed discussion of the land reform package in Vanuatu see: McDonnell, *My Land, My Identity*, 312-319.

⁸³ National Land Development Taskforce (NLDT) and National Research Institute (NRI). (2007). *The National Land Development Taskforce Report: Land Administration, Land Dispute Settlement, and Customary Land Development*, NRI Monograph 39. Boroko, Papua New Guinea, National Research Institute.

⁸⁴ NLDT and NRI, *The National Land Development Taskforce Report*.

⁸⁵ Fairhead, Kauzi and Yala, *Land Reform in Papua New Guinea*, 1.

(Amendment) Act 2009 and the Land Groups Incorporation (Amendment) Act 2009 have been made as part of the NLDP. However, the NLDP has been criticised by NGOs for “designing schemes outside of customary law...” that are geared towards investor interests rather than landowners.⁸⁶

AusAID’s Pacific Land Program, conceived in 2006, was designed to support local land reform initiatives in the Pacific, including East Timor. The Pacific Land Program assisted countries in Melanesia through technical support and strengthening their land administration institutions. In 2008, AusAID published the *Making Land Work* report, a collection of commissioned research papers on different ideas about land across the Pacific. This report set out a much more progressive agenda in terms of recognition of customary institutions. It proposed that principles for land reform in the Pacific should be about ‘working with and not against customary tenure’ and ‘balancing the interests of landowners’.

At a regional level, the UN FAO, the World Bank, AusAID and the Pacific Islands Forum Secretariat continue to offer good governance and land and conflict minimisation policy principles. However, applying these principles to local initiatives and solutions to determine types of development and land reform that might be relevant to Melanesian conditions remains a challenge. While there are best practice models for land reform recommended at the international and regional levels (discussed in Chapter 7), these are not feeding into the land reform narratives articulated by actors at the national or local levels. Currently, Solomon

⁸⁶ AidWatch. (2008). National Land Development Taskforce Report: NGO Response. Australia, AidWatch. < <http://aidwatch.org.au/sites/aidwatch.org.au/files/NGO%20Submission%20to%20NLDT%20November%202008.pdf> > (Accessed 1/12/2015); see also Davidson, O. (June 2009). Land Reform in PNG and Vanuatu. Australia, AidWatch. < http://www.aidwatch.org.au/wp-content/uploads/2014/06/FactSheet_Land-reform-PNGVanuatu.pdf > (Accessed 5/12/2015).

Islands policy makers appear unaware of powerful critiques and debate circulating internationally - while key donors continue to provide funding support to assist regional governments pursue land reform agendas (see Chapter 7). Solomon Islands has benefited from such donor support through AusAID funded programs such as the Solomon Islands Institutional Strengthening of Land Administration Project (SIISLAP). These programs were part of the Solomon Islands government's ongoing land reform efforts to transform landholding arrangements through land recording and registration for economic development.

1.7 Researching Land Reform in Solomon Islands

1.7.1 Published Literature

My formal approach to this research topic began with a review of published materials on land reform in Melanesia and abroad. This review, the results of which are summarised in Chapter 2, established that the evolving discourse on land reform has been shaped by debates on individual rights and group rights for economic development.⁸⁷ Proponents of individual rights such as Helen Hughes argue that the privatisation of land is essential for economic development because it increases productivity, and enables land to become a commodity that can be used as collateral, leased or sold.⁸⁸ As a result, poverty can be reduced

⁸⁷ For a discussion of this debate see: Bower, J. (2011). Economics of Land Reform in the Pacific, or Micromodelling a Mataqali. *LRD Economics: A Blog by the Land Resources Division, Secretariat of the Pacific Community*. Secretariat of the Pacific Community.
<<https://lrdeconomics.wordpress.com/2011/08/24/economics-of-land-reform-in-the-pacific-or-micromodelling-a-mataqali/>> (Accessed 6/03/2016).

⁸⁸ Hughes, 'Aid Has Failed the Pacific.'; Hughes, 'Can Papua New Guinea Come Back from the Brink?'; Hughes, 'The Pacific is Viable!'; What this entails is the complete transformation of customary land to individual private property rights: see for example Curtin, T. and Lea, D. (2006). 'Land Titling and Socioeconomic Development in the South Pacific.' *Pacific Economic Bulletin*, 21(1): 153-180.

because people are in a better position to financially engage in the cash economy. This neoliberal argument is ‘based on simplistic evolution of property rights assumption’ according to critics who advocate for the protection of customary land in Melanesia.⁸⁹

Evidence from Papua New Guinea and Vanuatu shows that customary land has the potential to facilitate economic development, has both economic and subsistence value, and is part of traditional economies that are a source of resilience.⁹⁰ Other scholars such as Jim Fingleton argue that, with appropriate adaptation, customary land tenure in Melanesia can facilitate economic development.⁹¹ While these theoretical debates continue to shape land reform discourse at the global, regional and national levels, there are ground-level studies from Melanesia and elsewhere that suggest that land reform does not translate into improved productivity.⁹² Ron Crocombe, for example, explains that ‘most land reform laws in the

⁸⁹ McDonnell, *My Land, My Identity*, 254; see also Fingleton, *Privatising Land in the Pacific*; and Anderson, T. and Lee, G. (eds). (2010). *In Defence of Melanesian Customary Land*. Australia, AidWatch.

⁹⁰ On economic development, see Sukot, S. (2010). ‘Down Playing Defects in the State System and Over Emphasising Customary Land Tenure Conversion for Development in Papua New Guinea.’ In Anderson, T. and Lee, G. (eds), *In Defence of Melanesian Customary Land*, 5-10; on economic and subsistence value, see Anderson, T. (2010). ‘Land Registration, Land Markets and Livelihoods in Papua New Guinea.’ In Anderson, T. and Lee, G. (eds), *In Defence of Melanesian Customary Land*, 11-20; and traditional economies, see Regenvanu, R. (2010). ‘The Traditional Economy as a Source of Resilience in Vanuatu.’ In Anderson, T. and Lee, G. (eds), *In Defence of Melanesian Customary Land*, 30-33.

⁹¹ Fingleton, J. (2007). ‘Rethinking the Need for Land Reform in Papua New Guinea.’ *Pacific Economic Bulletin*, 22(1): 115-121; Fingleton, J. (ed.). (2005). *Privatising Land in the Pacific*; Fingleton, J. (2005). ‘What a Carve-Up! Customary Land Tenure in the Pacific is a Good Basis for Evolving and Changing Societies, Which is Why the Right Are So Desperate to End It.’ *Arena Magazine* No. 78, 16-17; for literature showing that land can be productive under customary arrangements see: Allen, M.G. (2012). ‘Informal Formalisation in a Hybrid Property Space: The Case of Smallholder Oil Palm Production in Solomon Islands.’ *Asia Pacific Viewpoint*, 53(3): 300-313; Curry G.N. and Koczberski, G. (2009). ‘Finding Common Ground: Relational Concepts of Land Tenure and Economy in the Oil Palm Frontier of Papua New Guinea.’ *The Geographical Journal*, 175(2): 98-111.

⁹² Crocombe, R. (1987). ‘Registration, Security and Productivity in the Pacific Islands: Experience and Potentials.’ In Acquaye, B. and Crocombe, R. (eds), *Land Tenure and Rural Productivity*. Suva, FAO UN, IPS, USP, 26-46; Larmour, P. (1987). ‘Solomon Islands: Customary Land Registration Policy.’ In Acquaye, B and Crocombe, R. (eds), *Land Tenure and Rural Productivity*, 68-96; see also Bourke, M.R. (2005). ‘Agricultural production and customary land in Papua New Guinea.’ In Fingleton, J. (ed) *Privatising Land in the Pacific*, 6-15.

Pacific’ failed to achieve ‘their goals because planners have not assessed accurately enough what could be changed, and how far, by what forces, and at what speed’.⁹³

Scholars such as Ian Heath and Peter Larmour provide historical narratives which show how land reform made its way onto the political agendas of Melanesian countries.⁹⁴ Heath took a historical approach to examine how land policy developed in Solomon Islands from 1893-1978, while Larmour compared land policies in Papua New Guinea, Solomon Islands and Vanuatu from the late colonial era up to independence. Larmour’s focus was on government policy making and implementation, and the role of the state under the circumstances of decolonisation. Both scholars also showed that the goals intended for land reform in Melanesia have seldom been achieved. Unlike these scholars, my interest in the topic is prompted by continued references by scholars, jurists and policy makers to law as an unproblematic framework for dealing with land issues in Melanesia and elsewhere in the South Pacific. Analysis of the role and background of actors in shaping the success or failure of land reform to achieve its objective since the colonial era is almost non-existent in the debate on land and property rights in Melanesia.

1.7.2 Archival Sources

I turned to archival research and unpublished sources, following the lead of scholars such as Sally Engle Merry and Rebecca Monson, who describe this approach as ‘ethnography in

⁹³ Crocombe, R. (1989). *The South Pacific: An Introduction*. Suva, Institute of Pacific Studies, USP, 114.

⁹⁴ Heath, I.C. (1981). Land Policy in Solomon Islands. La Trobe University, PhD Thesis; Larmour, P. (1987). Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policymaking and Implementation before and after Independence in Papua New Guinea, Solomon Islands and Vanuatu. Macquarie University, PhD Thesis.

the archives'.⁹⁵ I instinctively adopted archival research with no prior knowledge of what the archive is and how I should approach it. I chose archival research because my position is very privileged due to my education training, work experience and network. There is no other Solomon Islander who has an extensive knowledge and understanding of how Solomon Islands land law has changed over time, or who has access to archival resources distributed around the world, and the necessary funding to do extensive research in these sources.

I began by going through the archival materials at the ANU and the National Library of Australia, as well as web-based material. These records contain an extensive collection of colonial government materials on land relating to the British Solomon Islands Protectorate, enabling me to identify the key actors during the colonial period and their approaches to land issues in Solomon Islands. The ANU Library and the Pacific Manuscripts Bureau at the ANU hold important collections from various individuals including the personal papers of Alan Ward, a historian, and Colin Allan, a colonial administrator, both of whom worked on land issues, and lived and worked in Melanesia. These collections illuminate the lived experience of land reform through discussions, correspondence, newspaper extracts, reports, parliamentary speeches, surveys and articles on land matters. I encountered original materials that provided insight into the history of the British Solomon Islands Protectorate (BSIP), its land policies and land claims, as well as the individual colonial officials who were influential in land reform.

⁹⁵ Merry, S.E. (2002). 'Ethnography in the Archives: Ethnography, Court Records and Archives.' In Starr, J. and Goodale, M. (eds), *Practicing Ethnography in Law: New Dialogues, Enduring Methods*. New York, Palgrave Macmillan, 128-142; Monson, Hu Nao Save Tok?; see also Monson, R. (2014). 'Unsettled Explorations of Law's Archives: The Allure and Anxiety of Solomon Islands' Court Records.' *Australian Feminist Law Journal*, 40(1): 35-50.

My archival research then extended to the Western Pacific High Commission (WPHC) archives held by the University of Auckland Special Collection library, where I spent two weeks. The WPHC collection contains extensive historical documentation relating to Solomon Islands ranging across colonial government correspondence, minutes of meetings, policy documents and records of the Lands Commission (1919-1925) initially chaired by Alexander Gibbs Gilchrist and subsequently by Frederick Beaumont Phillips. Some of the Phillips correspondence is held by the Library of Congress in Washington, so I consulted Kylie Moloney, the Executive Officer for the Pacific Manuscripts Bureau, who made arrangements for the Phillips correspondence to be copied. I further discovered that a key actor involved in drafting the new land law for BSIP in 1957 was Peter Brett. His collected papers are held by Melbourne University's library, which kindly made available scanned copies. Another key actor was Fredrick Kitto, Commissioner of Lands in the early 1950s. His papers are held by Oxford University's Bodleian Library, which also kindly scanned key documents and sent them to me.

Based on my experience of accessing archival material within Australia and beyond, I concur with scholars such as Rebecca Monson that 'the locus of control over important historical information still lies elsewhere, accessible only to Solomon Islanders who have the knowledge and the funds necessary to access it'.⁹⁶ Some of the people in my network directed me to some of the places where I could access the archival materials. Accessing these archival sources provided me with the background material with which to understand how Solomon Islanders articulated their land claims in a domain where the state became

⁹⁶ Monson, *Hu Nao Save Tok?*, 83.

the authority for the transformation of customary land to property and land arbitration to settle disputes. They provide the means to examine how the concept of land changed through state arbitration and the receding of the colonial frontier.

1.7.3 Fieldwork, Case Studies and Interviews

The importance of the archival records lay in ‘the ways in which they shaped and were shaped by the specific contexts of early twentieth century British’ colonialism, which contributed to my understanding of the colonial history of land law in Solomon Islands.⁹⁷ My review of the archival records influenced my selection of three case study field sites: (i) Wanderer Bay, west Guadalcanal; (ii) Honiara; and (iii) Baunani, Malaita. My rationale for choosing these field sites was that they each provide long historical trajectories that show how customary land changed from a frontier to a formal state system, mediated by actors through the rule of law, state arbitration and land law reform. These field sites are also a grounded register of the consequences of land sale agreements and the decisions of the Alexander and Phillips Lands Commission.

Equipped with historical information drawn from archival research and with ethics approval from the ANU Human Research Ethics Committee and a research permit from the Ministry of Education and Human Resource Development, Solomon Islands, I proceeded to undertake four months of fieldwork on Guadalcanal and Malaita. This engagement on the ground

⁹⁷ Kapteijns, L. (2004). ‘Government Qadis and Child Marriage in Aden: Ethnography in the Aden Archives.’ *The International Journal of African Historical Studies*, 37(3): 401-434, 402; Sally Engle Merry makes a similar point in describing her work in the colonial court records of Hawai’i as ‘ethnography in archives’, with reference to cases before the colonial courts in the context of both local networks and power relations and global processes of economic and political change: Merry, ‘Ethnography in the Archives’. See also Monson, Hu Nao Save Tok?

allowed the archive to breathe – it gave life to the archival documents that I had accessed. Archival documents are not simply pieces of paper stored somewhere, but are material inscriptions that have changed people's lives or registered those changes. By undertaking fieldwork, I was going back to find the stories of how people's land and lives have changed.

Before visiting the case study field sites, I spent three weeks at the Solomon Islands National Archives to ensure that I had not missed any significant historical materials. I discovered an extensive collection of British Solomon Islands Protectorate records, government documents, court files and the records of various Christian missions. However, after going through historical records relating to land in the National Archives I noticed that there were files missing, some files were empty and other files had missing pages. While this was frustrating for local researchers, I was fortunate to have accessed archival materials from other localities that completed the information I required in order to reconstruct past approaches to land reform and the actors involved. The staff from the National Archives were very helpful in locating historical records and copying them for me. In exchange I shared with them some of the material I had accessed from other places, which were missing from the National Archives collection.

While I was in the National Archives going through the historical records, I started making contacts with locals whom I knew from each of the three case study field sites, asking them to inform their communities about my forthcoming research visits. I also contacted church leaders to make links with people on the ground because churches are amongst the most powerful networks in Solomon Islands. I was careful with how I approached and talked with people in Wanderer Bay, west Guadalcanal; Honiara; and Baunani, because of the sensitivity

around land. Although I am a Malaitan, I was able to establish a sense of trust with the people from other islands such as Guadalcanal, with whom I engaged by using existing local networks to initiate conversations about their land.

I portrayed myself not as an expert but as another Solomon Islander who wants to find solutions to the ongoing issues around land. My principal method in these engagements was ‘tok stori’, a Solomons Pijin expression for a flexible and informal conversation. Through ‘tok stori’ I would invite people to talk about the history of their place and whether there had been any experience of land alienation. Part of each ‘tok stori’ was my explanation of why I selected their place as one of my field sites, which then linked into a discussion about my research and land more broadly. I encouraged people to ask me any questions on either my research or other issues they wanted to discuss. People were able to talk about their land freely because they knew that I had access to archival documents relating to their land and wanted to understand how it was alienated. In some instances, I shared with people some of the archival documents including showing them maps.

As a result, the ‘tok stori’ came to explore not only my research but also other issues ranging from politics to law, education and other socio-economic development issues concerning Solomon Islands. In this way the ‘tok stori’ provided the broader contexts for land reform that are often missing in policy research and statements; this was not just about my research but more an opportunity to share knowledge and provide awareness to empower people and raise awareness of the socio-economic and legal issues relating to land in Solomon Islands and elsewhere. Woven into any ‘tok stori’ is the space for chewing betel nut, making context-specific jokes and sharing island food with the people. In this way, people felt comfortable

to talk and together we created an environment for an ongoing conversation on land issues. If I wanted to ask them a specific question relating to my research I would seek their approval during our 'tok stori' or ask whether it was alright to do a follow up interview.

I use my case study field sites to trace how frontier transactions, colonial rule, state arbitration and land reform have impacted on the landscapes and lives of Solomon Islanders. The case study approach helped me to identify common elements and differences in local experiences, which formed the basis of my analysis of both the appropriateness of land reform in Solomon Islands and whether lessons could be drawn usefully from elsewhere. My aim in using this case study method has been to address theoretical propositions and practical issues relating to land reform, allowing me to focus on specific instances or situations, to identify the various interactive processes at work, and to test how changes in land laws and colonial structures of power have been understood locally.⁹⁸ As advocated by Kathleen M. Eisenhardt, '[t]he case study is a research strategy which focuses on understanding the dynamics present within single settings'.⁹⁹ I combined the case study research method with semi-structured interviews with key historical players in Honiara, Canberra and elsewhere to gain insight into their personal experiences of land reform. The material I collected was reviewed and triangulated with my other data. In some instances, I then followed up on any information which required further clarification or verification through email, telephone or a personal revisit.

Although I have completed my fieldwork, I continue to maintain links with the people that I have interviewed and talked with. Every time I go back to the Solomon Islands, I try to

⁹⁸ Bell, J. (2005). *Doing Your Research Project* (4th ed). England, Open University Press.

⁹⁹ Eisenhardt, K.M. (1989). 'Building Theory from Case Study.' *The Academy of Management Review*, 14(4): 532-550, 534.

connect with these people by catching up for coffee, lunch, kava or betel nut chewing. Through these informal gatherings we could talk about land, politics, my research and other issues. I have adopted this approach to research because I am a Solomon Islander researching and writing about land in my own country. Maintaining such relationships is important because my interest in land and in these particular communities will not be confined to the period of my doctoral research – this is a lifetime project, as central to my personal interests as it is to those of my country.

1.8 Thesis Outline

My engagement with the archives influenced me to develop an interest in the concepts and theoretical positions that I have encountered in the literature. My fieldwork gave me a clear sense of how to weave the concepts and theoretical positions into my thesis, which comprises eight chapters. Following this introduction, which provides some background to land reform and my research methodology, I open Chapter 2 with an outline of land reform discourse drawn from a review of the scholarly literature. I then discuss Actor Network Theory and other concepts that I will draw on in showing how key actors and their backgrounds have been influential in shaping land law reform.

In Chapter 3, I focus on Charles Morris Woodford, the first Resident Commissioner of the British Solomon Islands Protectorate (1896-1915), as a key actor who first introduced Western law as an instrument for land reform. I examine his background and experiences to trace how he created alliances and developed ideas about the Solomon Islands as a laboratory in which to shape the development of early colonial land law for capitalist development.

In Chapter 4, I look at the background and roles of Gilchrist Gibbs Alexander and Frederick Beaumont Phillips, the two Commissioners (1919-1925) appointed to hear the land claims that emerged as a result of the transition of customary land tenure into a formal property rights regime. Their individual backgrounds powerfully influenced their approaches to land claims by Solomon Islanders, and have in turn set the terms for the subsequent history of land reform in Solomon Islands.

I discuss some of these land claims considered by Alexander and Phillips, including three land claims which I further explore as my case study field sites: Wanderer Bay, Honiara and Baunani. I analyse the reports on the proceedings of this Lands Commission in reference to these three land claims and others to show how Alexander and Phillips shaped the outcome of state-driven arbitration, which further entrenched land alienation. I show here how Alexander and Phillips individually influenced the transmission of property rights ideas through a state arbitration system, setting the terms for future land reform narratives.

In Chapter 5, I discuss Colin Allan's background and how this influenced his work for the Special Lands Commission (1952-1957). I examine Allan's fieldwork notes and report to determine how he made his findings to shape the Special Lands Commission's recommendations. My aim in this chapter is to trace how Allan borrowed ideas or knowledge from elsewhere to influence the work of the Commission and how this impacted on land reform in Solomon Islands. As I will show in this chapter, Allan's recommendations provided the basis for subsequent land law reform attempts, which I discuss in the next chapter.

In Chapter 6, I look at key actors in relation to the land reform attempts from 1959-1990. The focus here is on how actors such as Peter Brett, Stanhope Rowton Simpson and others

influenced the drafting and implementation of these land law reforms. This involves a discussion of the land reform programs, introduced through land adjudication and registration processes, to gauge the extent of their success. I make reference to my three case study field sites to show how these land reform attempts impacted on people's relationships with the land at each location.

In Chapter 7, I build on the preceding chapters to examine the purpose of land reform in contemporary Solomon Islands within a rule of law framework. This will include examining the roles of recent key actors, such as Andrew Nori, who were involved in land reform and the principles they advocate. The main argument of this chapter is that while there are best practice principles for land reform there is no clear link or shared understanding regarding the purpose of land reform amongst actors from the international, regional, national and local levels.

Finally, in Chapter 8, I reflect more broadly on the background and role of key actors in driving land law reform, and consider how land reform might work in the contemporary landscape, in light of this long history of land reform failure in Solomon Islands. My focus on key actors and their networks emerges not just as a useful analytical method, but also as a strategy for improving the outcomes of future attempts at reforming the management of land in Solomon Islands.

CHAPTER 2: Land Reform: Review, Theoretical Concepts and Issues

2.1 Introduction

This chapter provides an overview of the key academic literature on land reform, with particular emphasis on the discourses on which actors draw to advocate for land reform. Land reform refers to any program, policy framework or land law designed to change how land is held and used. Since the literature on land reform in Solomon Islands is fairly limited, I augment it with relevant studies from Melanesia, sub-Saharan Africa and elsewhere in the world. This is necessary because, as Rebecca Monson highlights, ‘discourses about land relations in Melanesia have long been influenced by debates about land tenure elsewhere in the world, particularly in Africa’.¹ Sally Engle Merry and Donald Brenneis make a similar point when they assert that ‘colonial officials in the Pacific often drew on their own experiences as well as the lessons learned by officials elsewhere in the empire; and theoretical understandings and strategies from one place were often transplanted to others’.² I discuss the idea of transplantation in relation to actor roles in Chapters 6 and 7.

Informed by the work of Monson, Merry and Brenneis, I devote the first part of this chapter to a review of previous studies on land reform in order to ascertain the kinds of debates that have been in circulation and how they have influenced land reform narratives for development in Solomon Islands and Melanesia (see Map 1, xi). In the next part of this

¹ Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis, 5.

² Merry, S.E. and Brenneis, D. (2003). ‘Introduction.’ In Merry, S.E. and Brenneis, D. (eds), *Law and Empire in the Pacific: Fiji and Hawai’i*. Oxford, James Currey Publishers, 3-34, 25.

chapter, my focus is on the theoretical concepts central to my research, such as Actor Network Theory (ANT). I introduce the notion of the frontier and key issues such as violence and depopulation, before turning to the question of property rights. The critical actors in the history that I seek to map each had their own networks and brought with them their own conceptual frames such as colonisation, pacification, law and order, and civilisation. ANT provides an overarching frame that allows me to integrate each of these issues in terms of their role or influence in the development of actor roles and networks.

2.2 Land Reform Review

My research began with a review of the available literature on land reform in Solomon Islands, in the South Pacific and elsewhere globally. A common theme in this literature is the extent to which land reform approaches revolve around incentives that promote economic growth and development.³ This section introduces the literature on approaches to land reform with particular emphasis on the role of economic incentives.

2.2.1 Land Reform Approaches

Land reform is part of the policy agenda of governments,⁴ international agencies such as the World Bank,⁵ and other donors with the goal of improving land as a factor of production for

³ Yala, C. (2006). 'Rethinking Customary Land Tenure Issues in Papua New Guinea.' *Pacific Economic Bulletin*, 21(1): 129-137, 130.

⁴ Lakau, A.A.L. (1997). 'Customary Land Tenure, Customary Landowners and the Proposal for Customary Land Reform in PNG.' *Anthropological Forum*, 7(4): 529-547; Larmour, P. (2002). 'Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.' *Public Administration and Development*, 22(2): 151-161; Adams, M., Sibanda, S. and Turner, S. (1999). 'Land Tenure Reform and Rural Livelihood in South Africa.' *Natural Resources Perspective* No. 39. London, Overseas Development Institute, 1-15; Gran, T. (2007). 'Liberation Regimes and Land Reform in Africa. Land Politics Transcending Enmity in South Africa.' *Public Administration and Development*, 27(4): 293-305.

⁵ World Bank. (1975). *Land Reform*. Washington DC, World Bank.

development and economic growth. The reform agenda has gained in prominence in developing countries due to ‘increased population, pressure on limited land base and unequal distribution of land’.⁶ From the 1950s to the 1960s, land reform was focused on Latin America as well as Asia, where land systems were ‘characterized simultaneously by comparatively larger properties and small operational holdings while large estates dominated in Latin America’.⁷

Land reform in Asia focused on land transfer from the ‘landowner to the cultivator of the existing small holding’,⁸ whilst in Latin America reform programs addressed the redistribution of land ‘from the latifundian owners to landless workers and small scale cultivators’.⁹ Land reform programs in these two regions were ostensibly initiated in order to restructure the allocation of property rights in land so as to facilitate social equality and justice.¹⁰ Other countries such as Egypt (where certain features of the land system resembled Asian forms of ownership), Ethiopia (under an essentially feudal system), and South Africa and Zimbabwe (where white minorities monopolised the land systems) focused on the transformation of their agrarian structures. The rest of sub-Saharan Africa was considered a

⁶ World Bank, *Land Reform*.

⁷ Platteau, J.P. (1992). *Land Reform and Structural Adjustment in Sub-Saharan Africa: Controversies and Guidelines*. Rome, FAO, 5.

⁸ Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*, 5.

⁹ Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*.

¹⁰ Zarin, H.A and Ariffian, B.A. (1994). ‘Theory on Land Reform: An Overview.’ *Bulletin Ukur*. 5(1): 9-14. Online <<http://eprints.utm.my/4990/1/Theory.pdf>> (Accessed 5/04/2015); Russell, K. (1977). *Land Reform: A World Survey*. London, B. Bell and Sons; Acquaye, E. (1984). ‘Principles and Issues.’ In Acquaye, B. and Crocombe, R. (eds), *Land Tenure and Rural Productivity*. Suva, FAO UN/IPS/USP, 11-25.

special case because of the ‘abundant land endowments and flexibility of its communal tenure’.¹¹

From the Mexican revolution in 1910 to the fall of the Berlin wall in 1989, land redistribution was broadly popular due to the assumption that restructuring larger rural land holdings and making them accessible to small scale farmers or poor peasants would improve productivity.¹² During the 1950s and 1960s, neither professional economists nor the World Bank took an active interest in pursuing land reform. Instead, the World Bank’s focus during this period was on ‘agriculture development projects such as land irrigation, land settlement schemes, agribusiness ventures, tree crop plantations, credit programs and the provision of on farm inputs’.¹³ This policy view was evident in the International Bank’s Mission recommendation to the Government of Tanganyika (now Tanzania) in the 1960s to introduce land settlement schemes in “empty” areas. The Bank’s view was that land redistribution, as a component of land reform, should be guided by national policy and internal politics. In the context of unfolding decolonisation, land reform was considered too political for Bank involvement in terms of financing.¹⁴

¹¹ Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*, 5-6.

¹² Borras Jr, S.M. (2006), ‘The Underlying Assumptions, Theory, and Practice of Neoliberal Land Policies.’ In Rosset, P., Patel, R. and Courville, M. (eds), *Promised Land: Competing Visions of Agrarian Reform*. Oakland, Calif, Food First Books, 99-128, 100.

¹³ Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*, 7.

¹⁴ Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*, 8.

Analysis of data on the relationship between farm size and productivity, mainly from Africa, demonstrated that farm size had an impact on productivity.¹⁵ Such a relationship, as Frank Place observes, makes ‘redistribution of land ... not only good from an equity perspective, but from an efficiency perspective’ as well.¹⁶ This view was linked to the perception of customary land tenure as a hindrance to economic development in which communally-owned customary land redistributed to smallholder communities or individual farmers would be improved and rendered more productive.¹⁷ There is an extensive literature on customary land as a constraint on productivity.¹⁸ The broad goal for land reform during this period was the establishment of a stable peasant society.¹⁹ Following Frank Hirtz, I would argue that this line of reform thinking assumes that if those who work the land do not own it, then they are inevitably insecure.²⁰ Yet, in the context of Melanesia, all Indigenous people are landowners because, by birth, they are part of one or more autonomous landowning groups in the customary domain.²¹

¹⁵ Place, F. and Hazell, P. (1993). ‘Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa.’ *American Journal of Agricultural Economics*, 75(1): 10-19.

¹⁶ Place, F. (2009). ‘Land Tenure and Agricultural Productivity in Africa: A Comparative Analysis of the Economics Literature and Recent Policy Strategies and Reforms.’ *World Development*, 37(8): 1326-1336. For examples on the relationship between farm size and productivity see: Adesina, A. and Djato, K. (1996). ‘Farm Size, Relative Efficiency and Agrarian Policy in Cote d'Ivoire: Profit Function Analysis of Rice Farms.’ *Agricultural Economics*, 14(2): 93-102; Deininger, K. and Castagnini, R. (2006). ‘Incidence and Impact of Land Conflict in Uganda.’ *Journal of Economic Behaviour and Organization*, 60(3): 321-345.

¹⁷ Place and Hazell, ‘Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa.’

¹⁸ Migot-Adholla, S., et al. (1991). ‘Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?’ *The World Bank Economic Review*, 5(1): 155-175.

¹⁹ Russell, *Land Reform*, 4.

²⁰ Hirtz, F. (1998). ‘The Discourse that Silences: Beneficiaries' Ambivalence towards Redistributive Land Reform in the Philippines.’ *Development and Change*, 29(2): 247-275.

²¹ Foukona, J. and Timmer, J. (2016). ‘The Culture of Agreement in Solomon Islands.’ *Oceania*, 86(2): 116-131.

The three principal approaches to land reform identified in the global literature are those driven by the community, the state, and the market.²² The community-driven approach considers land reform ‘as a community tool for managing land and resources rather than a state led intervention to attain greater outputs’ including land redistribution to poorer landless labourers.²³ The state- and market-driven approaches are both usually initiated by the state and can be supported by donor countries,²⁴ international agencies such as UN FAO and the World Bank, or donor agencies such as USAID.²⁵ Sometimes there is an overlap in reform approaches, depending on the nature of the land reform program. Each of these three reform approaches addresses differently the questions of how land is owned, used or acquired through state bureaucracy, land market or community.²⁶ The formulation of land reform approaches in Melanesia has been a mixture of each of these approaches, often shaped by

²² For literature on land reform driven by the community see: Bryden, J. and Geisler, C. (2007). ‘Community-based Land Reform: Lessons from Scotland.’ *Land Use Policy*, 24(1): 24-34; for literature on land reform driven by the state see: Barnes, G. and Griffith-Charles, C. (2007). ‘Assessing the Formal Land Market Deformalisation in St. Lucia.’ *Land Use Policy*, 24(2): 494-501; Sikor, T. and Muller, D. (2009). ‘Limits of State Led Land Reform: An Introduction.’ *World Development*, 37(3): 307-316; Ng’ong’ola, ‘Design and Implementation of Customary Land Reforms in Central Malawi.’ *Journal of African Law*, 26(2): 115-132; and for literature on land reform driven by the market see: Wallace, J. and Williamson, I. (2006). ‘Building Land Markets.’ *Land Use Policy* 23(2): 123-135; Borras Jr, S. M. (2003). ‘Questioning Market Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa.’ *Journal of Agrarian Change*, 3(3): 367-394.

²³ Bryden and Geisler, ‘Community-based Land Reform’, 25.

²⁴ For example, US efforts in agrarian reform in Japan, Taiwan and South Korean were considered successful while similar efforts in the Philippines, Vietnam and Latin American counties failed. In Africa the French and British were influential in trying to change communal land structures to Western freehold models: Dorner, P. (1999). ‘Technology and Globalization: Modern-Era Constraints on Local Initiatives for Land Reform.’ *UNRISD Discussion Paper No.100*. Geneva, United Nations Research Institute for Social Development (UNRISD).

²⁵ Dorner, Technology and Globalization.

²⁶ Larmour, P. (1990). ‘Public Choice in Melanesia: Community, Bureaucracy and Market in Land Management.’ *Public Administration and Development*, 10(1): 53-68.

policy discourses developed through debates about land in other developing countries, and particularly in Africa.²⁷

Since the 1950s, land reform attempts introduced by colonial administrators in Solomon Islands focused on transforming customary land into registered estates through adjudication and registration processes for agriculture development. Such reform attempts were influenced by modernisation theory, whereby customary land was characterised as lacking ‘defined and enforceable rights’ to provide legal security for promoting ‘agricultural investment and economic growth’.²⁸ From the 1970s to the 1990s, land reform in Melanesia was driven largely by state actors with the influence and support of international institutions such as the World Bank, which have emphasised economic liberation.²⁹ The dominant thinking by proponents of land reform during this period was that customary tenure systems were inadequate to create land markets, and that securing rights through state legal systems should be the way forward. Such thinking was pervasive in African contexts and contributed to shaping policy in the Pacific, particularly in Papua New Guinea and elsewhere in Melanesia.³⁰ In 1995, the Papua New Guinea government negotiated a loan with the World

²⁷ Larmour, P. (2002). ‘Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.’ *Public Administration and Development*, 22(2): 151-161.

²⁸ Monson, Hu Nao Save Tok?, 6.

²⁹ Note, before 1975, ‘the World Bank did not take any active interest in land reform, nor for that matter, in any programme of institutional reform’: Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa*, 7.

³⁰ Larmour, P. (2005). *Foreign Flowers: Institutional Transfer and Good Governance in the Pacific Islands*. Honolulu, University of Hawai’i Press; see also Larmour, ‘Policy Transfer and Reversal.’

Bank that had as one of its conditions the registration of customary land, though this resulted in violent protests locally.³¹

Since the 1990s there has been a shift in the debate about the relationship between state legal systems and customary land tenure. A considerable literature from sub-Saharan Africa has revealed that land registration does not guarantee legal security; instead it has exacerbated social inequality and conflict.³² Another emerging body of research shows that customary tenure systems, which are shaped by social relationships and processes of negotiation, are flexible and adaptable.³³ In a Melanesian context, as discussed by Rebecca Monson, scholars have also paid attention to issues of ‘ambiguity, indeterminacy and contestations in relation to land’ in reference to mining, forestry and land registration schemes, particularly in Papua New Guinea.³⁴ This literature reinforces an understanding of customary land systems as

³¹ James, R.W. (1990). ‘Land Mobilisation Program in Papua New Guinea.’ *Melanesian Law Journal*, 18: 38-52, 39; Editor. (August 1995). ‘Papua New Guinea: Focus on Land.’ *Pacific News Bulletin*, 10(8): 7.

³² Fitzpatrick, D. (2005). ‘Evolution and Chaos in Property Right Systems: The Third World Tragedy of Contested Access.’ *Yale Law Journal*, 115(5): 996-1048; Platteau, J.P. (2008). ‘The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment.’ *Development and Change*, 27(1): 29-86; Peters, ‘Challenges in Land Tenure and Land Reform in Africa’; Bromley, D.W. (2009). ‘Formalising Property Relations in the Developing World: The Wrong Prescription for the Wrong Malady.’ *Land Use Policy*, 26(1): 20-27; Abdulai, R.T. and Domeher, D. (2012). *Why Real Estate Ownership Security Cannot Be Assured via Land Registration in Sub-Saharan Africa*. New York, Nova Science Publishers.

³³ Berry, S. (1989). ‘Access, Control and Use of Resources in African Agriculture: An Introduction.’ *Africa: Journal of the International African Institute*, 59(1): 1-5; Foale, S. and Macintyre, M. (2000). ‘Dynamic and Flexible Aspects of Land and Marine Tenure at West Nggela: Implications for Marine Resource Management.’ *Oceania*, 71(1): 30-45; Berry, S. (2002). ‘Debating the Land Question in Africa.’ *Comparative Studies in Society and History*, 44(4): 638-668.

³⁴ Monson, Hu Nao Save Tok?, 7. For literature on Papua New Guinea see: Brown, P., et al. (1990). ‘Land Tenure and Transfer in Chimbu, Papua New Guinea: 1958-1984: A Study in Continuity and Change, Accommodation and Opportunism.’ *Human Ecology*, 18(1): 21-49; Filer, C. (1997). ‘Compensation, Rent and Power in Papua New Guinea.’ In Toft, S. (ed.), *Compensation for Resource Development in Papua New Guinea*. Canberra, ANU Press, 156-189; Ballard, C. and Banks, G. (2003). ‘Resource Wars: The Anthropology of Mining.’ *Annual Review of Anthropology*, 32(0): 287-313; Power, A.P. (2003). Creation of Melanesian Property Rights-Building Bridges between Custom and Commerce. *PNGbua.com*; Weiner, J.F. (2005). ‘The Incorporated Ground: The Contemporary Work of Distribution in the Kutubu Oil Project Area, Papua New Guinea.’ In Widlok, T. and Tadesse, W.G. (eds), *Property and Equality, Volume II: Encapsulation, Commercialisation, Discrimination*. New York, Oxford, Berghahn Books, 173-190; Weiner, J. and Glaskin, K. (eds). (2007). *Customary Land Tenure and Registration in Australia and Papua New*

having overlapping claims and complex social structures which are associated with kinship systems and inheritance practices that are flexible and negotiated.³⁵ By implication, this raises concerns about whether the conversion of customary land tenure systems to registered freehold tenure or perpetual estates can actually achieve its stated goal of improving conditions for landowning communities, leading to a gradual shift in thinking about the relationship between customary and state tenurial systems.

International institutions such as the World Bank³⁶ and AusAID,³⁷ have begun to consider this shift in thinking in shaping their own policy approaches. While there is some evidence that customary tenure systems can provide relative security, access to vulnerable people and access to dispute settlement mechanisms,³⁸ there is also literature showing that customary

Guinea: Anthropological Perspectives. Canberra, ANU Press; Filer, C. (2011). 'New Land Grab in Papua New Guinea.' *Pacific Studies*, 34(2/3): 269-294.

³⁵ For literature on customary land tenure in Melanesia see: Hogbin, I.H. (1939). 'Land Tenure in New Guinea.' *Oceania*, 10(2): 113-165; Allan, C.H. (1957). *Customary Land Tenure in the British Solomon Islands Protectorate*. Honiara, Western Pacific High Commission; Rodman, M. (1984). 'Masters of Tradition: Customary Land Tenure and New Forms of Social Inequality in a Vanuatu Peasantry.' *American Ethnologist*, 11(1): 61-80; Rakai, M.E.T., et al. (1995). 'Traditional Land Tenure Issues for LIS in Fiji.' *Survey Review*, 33(258): 247-262; Rodman, M. (1995). 'Breathing Spaces: Customary Land Tenure in Vanuatu.' In Ward, R.G and Kingdon, E. (eds), *Land, Custom and Practice in the South Pacific*. UK, Cambridge University Press, 65-108; Zorn, J.G. (1992). 'Graun Bilong Mipela: Local Land Courts and the Changing Customary Law of Papua New Guinea.' *Pacific Studies*, 15(2): 1-38; Zoleveke, G. (1979). 'Traditional Ownership and Land Policy.' In Larmour, P. (ed.), *Land in Solomon Islands*. Suva, IPS, USP and Ministry of Agriculture and Lands Solomon Islands, 1-9; Mosko, M. (2005). 'Customary Land Tenure and Agriculture Success: The Mekeo Case.' In Fingleton, J. (ed.), *Privatising Land in the Pacific: A Defence of Customary Tenures*. Canberra, The Australian Institute, 16-21; Foukona, J.D. (2010). 'Management of Customary Land as a Form of Communal Property in Solomon Islands, Vanuatu and Fiji.' In Godden, L. and Tehan, M. (eds), *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures*. New York, Routledge, 263-289.

³⁶ Deininger, K. (2003). *Land Policies for Growth and Poverty Reduction*. Washington DC, World Bank, 285.

³⁷ AusAID. (2008). *Making Land Work. Reconciling Customary Land and Development in the Pacific Vol 1*. Canberra, Australian Agency for International Development (AusAID), 1-91.

³⁸ Toulmin, C. and Quan, J. (2000). 'Evolving Land Rights, Tenure and Policy in Sub-Saharan Africa.' In Toulmin, C. and Quan, J. (eds), *Evolving Land Rights, Policy and Tenure in Africa*. London: Department for International Development/International Institute for Environment and Development/Natural Resources Institute; Benjaminsen, T.A. and Lund, C. (2002). 'Formalisation and Informalisation of Land and Water

tenure can systematically exclude women.³⁹ In addition, despite the flexible nature of customary land tenure that opens up multiple pathways for accessing land, there is empirical evidence showing that not all pathways would create land access.⁴⁰ This evidence has influenced some scholars to engage in a debate on the relationship between land and social inequality – a debate that has been largely absent thus far in the Pacific context.⁴¹

State structures in Melanesia are often referred to as ‘weak’ and dependent on donor support in order to implement land reform initiatives.⁴² These initiatives have always been focussed on enacting or amending land laws relating to land recording or registration to transform customary to property that could be leased or sold to investors. Many landowners remain excluded from the land reform process, much as in the colonial era. Scholars such as Andrew Lakau have suggested that landowners should be part of the land policy design so that they

Rights in Africa: An Introduction.’ *The European Journal of Development Research*, 14(2): 1-10; Fitzpatrick, ‘Evolution and Chaos in Property Right Systems.’

³⁹ Dzodzi, T. (2003). ‘Securing Women’s Interests within Land Tenure Reforms: Recent Debates in Tanzania.’ *Journal of Agrarian Change*, 3(1-2): 149-183; Rocheleau, D. and Edmunds, D. (1997). ‘Women, Men and Trees: Gender, Power and Property in Forest and Agrarian Landscapes.’ *World Development*, 25(8): 1351-1371; Gudhlanga, E. and Chirimuuta, C. (2012). ‘Are We Not Beneficiaries Also? Portrayal of Gender and Land Reform in Davie Mutasa's Sekai Minda Tave Nayo.’ *Gender and Behaviour*, 10(2): 4732-4750.

⁴⁰ Monson, Hu Nao Save Tok?; Shipton, P. and Goheen, M. (1992). ‘Introduction. Understanding African Land-holding: Power, Wealth, and Meaning.’ *Africa: Journal of the International African Institute*, 62(3): 307-325; Sikor, T. and Lund, C. (2009). ‘Access and Property: A question of Power and Authority.’ *Development and Change*, 40(1): 1-22; Lund, C. (2008). *Local Politics and the Dynamics of Property in Africa*. Cambridge, Cambridge University Press.

⁴¹ Peters, ‘Challenges in Land Tenure and Land Reform in Africa’; Peters, P.E. (2004). ‘Inequality and Social Conflict Over Land in Africa.’ *Journal of Agrarian Change*, 4(3): 269-314.

⁴² For literature on weak and failed state see: Kabutaulaka, T.T. (2002). A Weak State and Solomon Islands Peace Process. *East-West Centre Working Papers Series*, No. 14. Honolulu, East-West Center and Center for Pacific Islands Studies, University of Hawaii at Manoa; Hameiri, S. (2007). ‘Failed States or a Failed Paradigm? State Capacity and the Limits of Institutionalism.’ *Journal of International Relations and Development*, 10(2): 122-149. For discussion on weak or failed state to justify intervention strategies to restore law and order and build state capacity in Solomon Islands see: Dinnen, S. (2008). ‘State Building in a Post-Colonial Society: The Case of Solomon Islands.’ *Chicago Journal of International Law*, 9(1): 51-78.

could promote development in their own terms.⁴³ At present the land reform process mainly involves state actors who are often lawyers and state actors instead of grassroots landowners whose daily livelihood depends on customary land. Despite the land reform initiatives there are ongoing challenges and some of the contributing factors to the situation in Melanesia are: 1) inadequate state capacity; 2) formulation of land reform without landowner involvement;⁴⁴ 3) misconception of customary land tenure;⁴⁵ 4) a disconnect with traditional power structures; and 5) a failure by proponents of land reform to understand the nature and political economy of Solomon Islands as a nation State.

Land reform policy initiatives in post-colonial Melanesia have been reactive rather than proactive in design and consistently promote customary land registration as a reform priority. The focus is on group registration but the impetus for reform is the promotion of a Western system of property rights, largely unchanged since the colonial period. Scholars such as Daniel Fitzpatrick, using a typology framework through a law and economics interdisciplinary approach, have pointed out that ‘there is no single best practice model for recognizing customary tenure’.⁴⁶ Instead, countries should come up with legal measures related to the ‘causes and nature of tenure insecurity’.⁴⁷ Katherine Dixon argues further that

⁴³ Lakau, ‘Customary Land Tenure.’ See also Gegeo, D.W. (1998). ‘Indigenous Knowledge and Empowerment: Rural Development Examined from Within.’ *Contemporary Pacific*, 10(2): 289-315.

⁴⁴ Larmour, P. (2002). ‘Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.’ *Public Administration and Development*, 22(2): 151-161; Lakau, Customary Land Tenure, Customary Landowners and the Proposal for Customary Land Reform in PNG.’

⁴⁵ Allen, M.G. (2008). ‘Land Reform in Melanesia.’ *State Society and Governance in Melanesia, Briefing Paper* No. 6. Canberra, ANU, 1-5.

⁴⁶ Fitzpatrick, D. (2005). ‘‘Best Practice’ Options for the Legal Recognition of Customary Tenure.’ *Development and Change*, 36(3): 449-475, 471.

⁴⁷ Fitzpatrick, ‘‘Best Practice’ Options’, 471.

the structure of customary land has elements of both communal or commons property and anti-commons property. Therefore, the need to grasp the differences between these two property regimes is warranted because attempts to adopt Western principles of land tenure in Melanesia have had only limited success. It is truly ‘time to try the Melanesian way’.⁴⁸

2.2.2 Land as Complex

The debate around land reform revolves around how land is perceived in different ways: ‘in law it is property, in political science it is a source of power and strategy, in economics it is a factor of production, in social psychology it is a personalised guarantor of security, in anthropology an item of culture and in sociology a part of the social system’.⁴⁹ Given this broad spectrum of perspectives on land, a multidisciplinary approach is warranted to address land reform in Melanesia. Countries in Melanesia have between 86% and 98% of their land still under systems of customary tenure, which possess both a physical and spiritual dimension.⁵⁰ These systems have been conceptualised as informal property institutions regulated by customary law, which exists alongside the state legal system. Melanesian states lack the power to resolve this dualism but instead continue to recognise that non-state actors such as chiefs, elders or big men have the authority to deal with customary tenure.⁵¹

⁴⁸ Dixon, K. (2007). ‘Working with Mixed Commons/Anticommons Property: Mobilizing Customary Land in PNG the Melanesian Way.’ *Harvard Environmental Law Review*, 31(1): 220-277, 277.

⁴⁹ Russell, *Land Reform*, 4.

⁵⁰ Zoleveka, ‘Traditional Ownership and Land Policy’; and Bonnemaïson, J. (1984). ‘Social and Cultural Aspects of Land Tenure.’ In Larmour, P. (ed), *Land Tenure in Vanuatu*. Suva, IPS, USP, 1-5.

⁵¹ Boydell, S. and Small, G. (2003). ‘The Emerging Need for Regional Property Solutions: A Pacific Perspective.’ *Pacific Rim Real Estate Society Ninth Annual Conference Brisbane*, 19-22 January.

Literature on customary land in Melanesia and elsewhere shows that customary land systems are complex⁵² because land rights are multiple. While customary groups are commonly the landholders, in some instances individuals or families are also recognised as landholders and thus entitled to user rights. Having access to land depends on how a person is related to the customary group deemed to be the landowners.⁵³ Such a relationship provides the basis for determining who is a landowner.⁵⁴ The status of landowner is usually based on intermarriage, adoption, kinship ties or common descent through either matrilineal, patrilineal or cognatic (both matrilineal and patrilineal) ties.⁵⁵ Inheritance of land is based on this relationship structure, which is generally flexible; but in some areas, as for example in central Vanuatu,

⁵² Foale, S and Macintyre, M. (2000). 'Dynamic and Flexible Aspects of Land and Marine Tenure at West Nggela: Implications for Marine Resource Management.' *Oceania*, 71(1): 30-45; Scheffler, H.W. (1964). 'The Genesis and Repression of Conflict: Choiseul Island.' *American Anthropologist*, 66(4): 789-804; Scott, M.W. (2000). 'Ignorance is Cosmos; Knowledge is Chaos: Articulating a Cosmological Polarity in Solomon Islands.' *Social Analysis*, 44(2): 56-83; Burt, B. (1994). 'Land in Kwara'ae and Development in Solomon Islands.' *Oceania*, 64(4): 317-340; Rodman, 'Masters of Tradition'; Lakau, 'Customary Land Tenure, Customary Landowners and the Proposal for Customary Land Reform in PNG'; Brown, P., Brookfield, H. and Grau, R. (1990). 'Land Tenure and Transfer in Chimbu, Papua New Guinea: 1958-1984: A Study in Continuity and Change, Accommodation and Opportunism.' *Human Ecology*, 18(1): 21-49; Brandewie, E. (1971). 'The Place of the Big Man in Traditional Hagen Society in the Central Highlands of New Guinea.' *Ethnology*, 10(2): 194-210; Hogbin, I. and Lawrence, P. (eds). (1967). *Studies in New Guinea Land Tenure*. Sydney, Sydney University Press.

⁵³ Colin Filer discusses the distinction between customary group and landholding group and the fallacy that of believing that they are the same thing under landowner ideology: Filer, C. (2006). 'Custom, Law and Ideology in Papua New Guinea.' *The Asia Pacific Journal of Anthropology*, 7(1): 65-84; see also Filer, C. (2005). 'The Role of Landowning Communities in Papua New Guinea's Mineral Policy Framework.' In Bastida, E., Wald, Thomas., and Warden-Fernandez, J. (eds), *International and Comparative Mineral Law and Policy: Trends and Prospects*. Hague (Netherlands), Kluwer Law International, 903-931.

⁵⁴ Jorgensen, D. (1997). 'Who and What is a Landowner? Mythology and Marking the Ground in a Papua New Guinea Mining Project.' *Anthropological Forum*, 7(4): 599-627.

⁵⁵ Lakau, L.L.A. (1997). 'Customary Land Tenure, Customary Landowners, and the Proposals for Customary Land Reform in Papua New Guinea.' *Anthropological Forum*, 7(4): 529-547; see also Monson, R. (2011). *Negotiating Land Tenure: Women, Men and the Transformation of Land Tenure in Solomon Islands*. International Development Law Organisation, Traditional Justice: *Practitioners' Perspectives, Working Paper Series No. 1*. Rome (Italy), International Development Law Organisation (IDLO); Nanau, G.L. (2014). 'Local Experiences With Mining Royalties, Company and the State in the Solomon Islands.' *Journal de la Société des Océanistes*, 138-9, 77-92.

there is less flexibility because land ownership is closely linked to leadership titles.⁵⁶ The terms matrilineal and patrilineal, which refer to the ways in which land is transferred through lineages, have been sources of contestation in recent times. People confuse their application with the terms matriarchal and patriarchal, which have more to do with the exercise of power and authority over land access and use.⁵⁷

Customary land tenure is intimately embedded within social relations, which are related to subsistence activities, power structures, knowledge, identity and place.⁵⁸ Land is the source of people's livelihoods: where, amongst other activities, they cultivate their gardens, grow fruit trees, hunt, collect firewood and water, gather materials to build their houses, feed pigs and collect herbal medicine. Leaders of kinship groups, such as big men, chiefs or heads of families, have the authority to deal with issues relating to the access, use and distribution of customary land through occasions such as marriage or funerals. These power structures are

⁵⁶ Bonnemaïson, 'Social and Cultural Aspects of Land Tenure'; see also Rodman, 'Breathing Spaces.'

⁵⁷ On patriliney see Keesing, R. (1978). 'Politico-Religious Movements and Anti-Colonialism on Malaita: Maasina Rule in Historical Perspective II.' *Oceania*, 49(1): 46-73. On matriliney see Maetala R. (2008). 'Matrilineal Land Tenure Systems in Solomon Islands: The Cases of Guadalcanal, Makira, and Isabel Provinces.' In Huffer, E. (ed.), *Land and Women: The Matrilineal Factor: Matrilineal Land Tenure in the Marshall Islands, the Solomon Islands, and Vanuatu*. Suva, Pacific Islands Forum Secretariat; Scott, M.W. (2012). 'The Matter of Makira: Colonialism, Competition, and the Production of Gendered Peoples in Contemporary Solomon Islands and Medieval Britain.' *History and Anthropology*, 23(1): 115-148; Eves, R. (2011). 'Puzzling over Matrilineal Land Tenure and Development in New Ireland, Papua New Guinea.' *Pacific Studies*, 34(2/3): 350-373; Monson, Negotiating Land Tenure. On tracing of descent through men and women see Hviding, E. (1993). 'Indigenous Essentialism? 'Simplifying' Customary Land Ownership in New Georgia, Solomon Islands.' *Bijdragen tot de taal-, land-, en volkenkunde*, 149(4): 802-824; McDougall, D. (2005). 'The Unintended Consequences of Clarification: Development, Disputing and the Dynamics of Community in Ranongga, Solomon Islands'. *Ethnohistory*, 52(1): 81-109; see also Monson, Hu Nao Save Tok?

⁵⁸ Sillitoe, P. (1999). 'Beating the Boundaries: Land Tenure and Identity in the Papua New Guinea Highlands.' *Journal of Anthropological Research*, 55(3): 331-360; see also Crocombe, R.G. (1983). 'Land Tenure and Agriculture Development in the Pacific Islands.' *Extension Bulletin No. 187*, Food and Fertilizer Technology Centre, Taiwan, 1-9.

influenced by knowledge about the links between people, land and place, which is a history of landholding with a profound mythological underpinning. Crucially, land under customary systems is inalienable because land, livelihoods, authority, history, spiritual beliefs and social relations are interrelated and constitute the basis of Melanesian cosmologies.⁵⁹

Due to these entanglements, customary land tenure has often been criticised as an obstacle to agriculture and economic development because its communal nature is perceived by proponents of land reform as ‘a disincentive to hard work, accumulation of wealth, individual rights, [and] private property’.⁶⁰ Other criticisms have highlighted that:

customary tenure is assumed to encourage small uneconomic holdings; give inadequate security of tenure, and consequently, of incentive for investment in agriculture; impede the development of an active land market; discourage the extension of credit; encourage a high incidence of litigation; and perpetuate tribal division.⁶¹

These criticisms arise from the fact that under customary tenure there are multiple and overlapping rights based on unwritten genealogies and on land boundaries that are not surveyed, and are thus vulnerable to dispute.

⁵⁹ Ballard, C. (1997) ‘It’s the Land Stupid! The Moral Economy of Resource Ownership in Papua New Guinea.’ In Larmour, P. (ed), *The Governance of Common Property in the Pacific Region*. Canberra, ANU Press, 47-65; Rodman, ‘Breathing Spaces’; Zoleveke, ‘Traditional Ownership and Land Policy’; Ward, R.G. and Kingdon, E. (1995). ‘Land Tenure in the Pacific Islands.’ In Ward, R.G. and Kingdon, E. (eds), *Land, Custom and Pacific in the South Pacific*. Cambridge, Cambridge University Press, 36-64; Crocombe, R. (1974). ‘An Approach to the Analysis of Land Tenure Systems.’ In Lundsgaarde, H.P. (ed.), *Land Tenure in Oceania*. Honolulu, The University of Hawaii Press, 1-17; Lundsgaarde, H.P. (1974). ‘Pacific Land Tenure in a Nutshell.’ In Lundsgaarde, H.P. (ed.), *Land Tenure in Oceania*. Honolulu, University of Press of Hawaii, 265-275; Bonnemaïson, ‘Social and Cultural Aspects of Land Tenure.’

⁶⁰ Schoeffel, P. (1994). ‘Where Are All the Farmers? Agriculture, Land Tenure and Development in the Pacific Islands.’ In Crocombe, R. and Meleisea, M. (eds), *Land Issues in the Pacific*. Christchurch, Macmillan Brown Centre for Pacific Studies/USP, 35-42, 35.

⁶¹ Acquaye, E. (1984 reprint 1987). ‘Principles and Issues.’ In Acquaye, B. and Crocombe, R. (eds), *Land Tenure and Rural Productivity*. Fiji, FAO UN, Institute of Pacific Studies, USP, 11-25, 19; for discussion on the communal forms of tenure and their changing nature see: Ward, R.G. (1997). ‘Changing Forms of Communal Tenure.’ In Larmour, P. (ed), *The Governance of Common Property in the Pacific Region*. Canberra, ANU Press, 19-32.

Those who propose that the only way to stimulate economic growth in Melanesia is to secure titles to land do so from the standpoint of economics.⁶² This particular approach to land reform seeks to convert group rights into individual titles or freehold or perpetual estates in order to have a clearly defined bundle of rights. The assumptions underlying this approach have been in circulation throughout the colonial period, but became popularised more recently through the enormously influential writing of Hernando de Soto on the creation of formal property rights to stimulate economic growth.⁶³ However, de Soto's approach fails to address the complexities of customary land tenure systems in Melanesia (or elsewhere) and how these might impact on the success and sustainability of the proposed reforms. Literature in support of customary land tenure arrangements argue that completely discrediting customary tenure is a flawed approach because many cash crops such as cocoa, coffee and betel nut are successfully and profitably produced on customary land.⁶⁴ While there is broad recognition across the Melanesian literature of the need for some reform of customary land, it should be pursued on a case by case basis. In situations where registration is needed it

⁶² Hughes, H. (2003). 'Aid Has Failed the Pacific.' *Issues Analysis* No. 33; Hughes, H. (2004). 'The Pacific is Viable!' *Issue Analysis* 53. Sydney, Centre for Independent Studies; Gosarevski, S., Hughes, H. and Windybank, S. (2004). 'Is Papua New Guinea Viable?' *Pacific Economic Bulletin*, 19(1): 134-48; Gosarevski, S., Hughes, H. and Windybank, S. (2004). 'Is Papua New Guinea Viable with Customary Land Ownership?' *Pacific Economic Bulletin*, 19(3): 133-36; Yala, C. (2006). 'Rethinking Customary Land Tenure Issues in Papua New Guinea.' *Pacific Economic Bulletin*, 21(1): 129-137.

⁶³ De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York, Basic Books.

⁶⁴ Bourke, R.M. (2005). 'Agricultural Production and Customary Land in Papua New Guinea.' In Fingleton, J. (ed), *Privatising Land in the Pacific: A Defence of Customary Tenure*. Canberra, The Australian Institute, 6-15; Mosko, M. (2005). 'Customary Land Tenure and Agriculture Success: The Mekeo Case.' In Fingleton, J. (ed), *Privatising Land in the Pacific*, 16-21; see also Allen, M.G. (2012). 'Informal Formalisation in a Hybrid Property Space: The Case of Smallholder Oil Palm Production in Solomon Islands.' *Asia Pacific Viewpoint*, 53(3): 300-313.

should be based on group title instead of tenure conversion to individual title or freehold. Such an approach is more feasible and relevant to the Melanesian context.

The complexities of land reform in Melanesia are reflected in the historical development of the Melanesian states since the colonial period. The economic interests and development initiatives of colonial administrations have tended to focus on the stimulation of economic growth through agricultural production, particularly through large scale plantations and cash cropping activities. In Solomon Islands, Vanuatu and Papua New Guinea (PNG), agricultural development was heavily oriented towards plantations, which were almost entirely owned by expatriate settlers.⁶⁵ Large scale commercial plantations using modern machinery and methods for improved and increased production were seldom applied by landowner or local level farmers who were rarely familiar with introduced farming methods.⁶⁶ Islanders were subsistence-oriented rather than being like peasants, although empirical evidence has established that in some places a trend towards peasantry was led by big men who manipulated tradition to their advantage.⁶⁷

⁶⁵ Schoeffel, 'Where Are All the Farmers?'

⁶⁶ Luteru, P. (1994). 'Aid and Development in Relation to Customary Land Tenure: Some Social and Educational Implications.' In Crocombe, R. and Meleisea, M. (eds), *Land Issues in the Pacific*. Christchurch, Macmillan Brown Centre for Pacific Studies, USP, 19-33, 27.

⁶⁷ Rodman, 'Masters of Tradition.'

2.3 Theoretical Concepts and Issues

Through archival research and a review of the land reform literature, I became interested in using ANT as a frame with which to understand the roles of individual actors. My interest in post-colonial theory has introduced me to some key concepts such as the frontier and critical perspectives on property rights. Closely associated with the notion of the frontier are issues such as violence and depopulation. Situating these concepts and issues within an ANT frame provides a basis for understanding how actors drew (consciously or unconsciously) on their networks to develop ideas of civilization, pacification, law and order and Christianity. When historical actors experienced new events or phenomena, they processed them through these existing conceptual frames. Focusing on actors through an ANT frame allows for a more nuanced analysis of the factors that came to bear on their decisions regarding land reform.

2.3.1 Actor Network Theory.

Actor Network Theory (ANT) has its origin in Science and Technology Studies of the early 1980s, featuring the work of Bruno Latour, Michel Callon and John Law in its development.⁶⁸ As explained by Latour, ANT focuses on following the actors themselves,⁶⁹ who are both human and non-human, and treated on an equal footing because they are both ‘capable of

⁶⁸ Latour, B. (1987). *Science in Action: How to Follow Scientists and Engineers through Society*. Harvard, Harvard University Press; Callon, M. and Latour, B. (1981). ‘Unscrewing the Big Leviathan: How Actors Macrostructure Reality and Sociologists Help Them To Do So.’ In Knorr-Cetina, K. and Cicourel, A.V. (eds), *Advances in Social Theory and Methodology: Towards an Integration of Micro and Macro-Sociologies*. London, Routledge and Kegan Paul, 227-303; Callon, M. (1984). ‘Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay.’ *The Sociological Review*, 32(S1): 196-233; Law, J. (1992). ‘Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity.’ *Systems Practice*, 5(4): 379-393.

⁶⁹ Latour, B. (2005). *Reassembling the Social: An Introduction to Actor-Network-Theory*. Oxford, Oxford University Press, 12.

acting and being acted upon'.⁷⁰ ANT is 'concerned with examining the nature of scientific facts, suggesting that facts are created by a network, which gives them credence and acceptance'.⁷¹ In other words, facts are produced through and agreed upon by a network of alliances. The application of ANT extends beyond the sphere of science and technology to encompass the formation of facts, institutions, ideals, political arrangements, concepts, individuals and so on. The focus of ANT is on unpacking these things, which are referred to as 'black boxes', and examining how they gain widespread acceptance in order to determine their success or failure.⁷²

Latour uses the example of the scientist Louis Pasteur developing an anthrax vaccine as an illustration of how ANT comes into play. The success of Pasteur's laboratory work depended on his technical ability to isolate and culture bacteria so as to make the microbes visible to the human eye and then turn them into allies. For Pasteur to achieve this, 'he had to have some knowledge of how the microbes act on the world. He had to find some way to isolate them as agents, and doing so required complicity with what is peculiar to the microbes' appetites and ways of navigating the world'.⁷³ Here the microbes were participants or actants as much as the scientist, which means that agency includes both humans and non-humans.

⁷⁰ Shah, R.C. and Kesan, J.P. (November 6, 2007). 'Analyzing Information Technology and Societal Interactions: A Policy Focused Theoretical Framework.' *Illinois Public Law Research Paper* No.07-12. Chicago, University of Illinois, 10.

⁷¹ Scott-Smith, T. (2013). The Least Provocative Path: An ANT Lens on Development Project Formation and Dissolution. *Actor-Network Theory for Development Working Paper Series Paper* No. 3. UK, Centre for Democratic Informatics/ Institute for Development Policy and Management, 4.

⁷² Scott-Smith, The Least Provocative Path, 4-5.

⁷³ Gershon, I. (2010). 'Bruno Latour (1947–)'. In Simon, J. (ed.), *Agamben to Zizek: Contemporary Critical Theorists*. Edinburgh, Edinburgh University Press, 161-176, 164.

Latour explains how Pasteur, through the processes of enrolment and translation, created an alliance with actors such as veterinary groups and farmers who became interested in what was going on in the laboratory. This alliance was based on three moves by Pasteur as the central actor: (a) capturing the interest of others; (b) making the microbes visible to convince others to go to the lab if they wanted to solve their anthrax problems; and (c) returning to the farm to show the results through a translation process that would persuade people to use the vaccine to save their animals from anthrax.⁷⁴

ANT is about the relationality between people and objects, which contributes ‘to how interactions take place’.⁷⁵ It is the performance that ‘creates the relations and the objects/people/actants constituted by these relationships. Networks and actors do not exist prior to performance but are constituted by performance’.⁷⁶ The process of how knowledge is circulated shapes the social construction of truths: ‘Information becomes facts [sic] by travelling through networks in patterned ways that imbue the piece of knowledge with authority and relevance’.⁷⁷ To understand how information becomes fact requires ‘understanding of the processes of circulation underpinning how facts are made’.⁷⁸ Facts are considered to be true because people are persuaded and alliances are mobilised in their support. The success of this transformation also involves ‘the number of people that become

⁷⁴ Latour, B. (1983). ‘Give Me a Laboratory and I Will Raise the World.’ In Knorr-Centina, K.D. and Mulky, M. (eds), *Science Observed: Perspectives in the Social Study of Science*. London, Sage, 141-170, 145-152.

⁷⁵ Gershon, ‘Bruno Latour (1947–)’, 164-65.

⁷⁶ Gershon, ‘Bruno Latour (1947–)’, 166.

⁷⁷ Gershon, ‘Bruno Latour (1947–)’, 169-170.

⁷⁸ Gershon, ‘Bruno Latour (1947–)’, 170.

convinced of them, the awards that are conferred on them, the journals that publicise them, the technology that is based on them, and so on'.⁷⁹

Mützel elaborates on this process by proposing that a 'Network is a metaphor for the flows of translations that actants go through in making connections'.⁸⁰ An actant 'is any agent, collective or individual, that can associate or disassociate with other agents. Actants enter into networked associations, which in turn define them, name them, and provide them with substance, action, intention, and subjectivity'.⁸¹ Translation is an important concept in ANT, referring to '... the processes of negotiation, representation and displacement which establish relation between actors, entities and places'.⁸² As described by Brian Pentland and Martha Feldman, translation also refers to 'the use of ideas and objects change as they move from one context to another'.⁸³ The success of such an actor-network, as discussed by Tom Scott-Smith, depends on the idea of the black box, on translation and on the involvement of material objects.

The term 'black box' in ANT is used to describe the stabilised assemblages. A 'black box applies to any device, system or object that can be considered in terms of its input, output

⁷⁹ Scott-Smith, *The Least Provocative Path*, 9.

⁸⁰ Mützel, S. (2009). 'Networks as Culturally Constituted Processes. A Comparison of Relational Sociology and Actor-Network Theory.' *Current Sociology*, 57(6): 871-887, 877.

⁸¹ Ritzer, G. (2005). 'Actor Network Theory.' In Ritzer, G. (ed), *Encyclopedia of Social Theory*. Thousand Oaks, Sage Publications, 1-3.

⁸² Murdoch, J. (1998). 'The Spaces of Actor-Network Theory.' *Geoforum*, 29(4): 357-374, 362; see also Murdoch, J. (2001). 'Ecologising Sociology: Actor-Network Theory, Co-construction and the Problem of Human Exemptionalism.' *Sociology*, 35(01): 111-133; Callon and Latour, 'Unscrewing the Big Leviathan', 227-303.

⁸³ Pentland, B.T. and Feldman, M.S. (2007). 'Narrative Networks: Patterns of Technology and Organisation.' *Organisation Science*, 18(5): 781-795, 786.

and frequency of transfers between them, without any knowledge of its inner workings'.⁸⁴ Latour divides actors into intermediaries and mediators. An 'Intermediary ... is what transports meaning or force without transformation: defining its inputs is enough to define its output'.⁸⁵ It can be counted as a black box or a black box counting for one. Mediators are less easily identified because they 'cannot be counted as just one; they might count for one, for nothing, for several, or for infinity. Mediators transform, translate, distort, and modify the meaning or the elements they are supposed to carry'.⁸⁶

Actors can either be intermediaries or mediators, 'and can change between these categories depending on the role they take in the networks in which they play a part'.⁸⁷ The key to the success of actor-networks depends on the stabilising of the black boxes, getting one actor to play the role of an 'obligatory passage point' to drive the translation process, and the involvement of material objects.⁸⁸ The term 'obligatory passage point' refers to the situation where actors 'come together around the dominant framing and then engage in specific negotiations within the context of such framing'.⁸⁹ A specific actor may become accepted as

⁸⁴ Jones, C. (2015). *Networked Learning: An Educational Paradigm for the Age of Digital Networks*. Cham, Switzerland, Springer, 94.

⁸⁵ Latour, *Reassembling the Social*, 39.

⁸⁶ Latour, *Reassembling the Social*.

⁸⁷ Pollack, J., Costello, K., and Sankaran, S. (2013). 'Actor-Network Theory as a Sense Making Framework for Complex Organizational Change Programs.' *International Journal of Project Management*, 31(8): 1118-1128, 1120.

⁸⁸ Scott-Smith, The Least Provocative Path, 5-6.

⁸⁹ Rydin, Y. (2012). 'Using Actor-Network Theory to Understand Planning Practice: Exploring Relationships between Actants in Regulating Low-Carbon Commercial Development.' *Planning Theory*, 12(1): 23-45, 26.

the focal actor who defined the ‘obligatory passage point’ that other actors must pass through.⁹⁰

I draw on ANT in my research to examine the role of actors involved in land reform from the colonial period to the present day. However, as pointed out by Gabrielle Durepos and Albert Mills, although ANT studies makes reference to the past, they do not explicitly theorise about the ‘past’ and ‘history’.⁹¹ Indeed, Annemarie Mol has argued recently that ANT is not a true theory.⁹² An ANT perspective is not primarily concerned with reconstruction of the past but rather with the examination of actor roles in terms of ‘what they have done in the past, what they have thought, seen and believed’.⁹³ This perspective, along with Manji’s work,⁹⁴ which also draws on ANT, influenced me to consider ANT as one useful framework that I could use to examine key actors involved in land reform in Solomon Islands. I am aware of critical positions regarding ANT, such as assigning agency to non-human actors, and that ANT does not recognize social structure,⁹⁵ but such criticisms do not undermine ANT’s ‘real advantage as a heuristic device’.⁹⁶

⁹⁰ On the notion of an ‘obligatory passage point’ see: Shiga, J. (2007). ‘Translations: Artifacts from an Actor-Network Perspective.’ *Artifacts*, 1(1): 40-55; see also Callon, M. (1999). ‘Some Elements of Sociology of Translations: Domestication of the Scallops and the Fishermen of St. Brieuc Bay.’ In Biagioli, M. (ed.), *The Science Study Reader*. New York, Routledge, 67-83.

⁹¹ Durepos, G. and Mills, A.J. (2012). ‘Actor-Network Theory, ANT-history and Critical Organizational Historiography.’ *Organization*, 19(6): 703-721, 704.

⁹² Mol, A. (2010). ‘Actor-Network Theory: Sensitive Terms and Enduring Tensions.’ *Kölner Zeitschrift für Soziologie und Sozialpsychologies*, 50(1): 253-269.

⁹³ Scott-Smith, *The Least Provocative Path*, 14.

⁹⁴ Manji, A. (2006). *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*. London and New York, Zed Books.

⁹⁵ Elder-Vas, D. (2008). ‘Search for Realism, Structure and Agency in Actor Network Theory.’ *The British Journal of Sociology*, 59(3): 455-473.

⁹⁶ Scott-Smith, *The Least Provocative Path*, 7.

Importantly, ANT provides a new way of measuring land reform success, based not on whether a particular reform program has met its desired objectives or possesses inherent validity but rather on the extent to which it has managed to mobilise alliances. Accordingly, I trace actor roles and background through description rather than an explanatory framework because I start from the position of lacking knowledge of what actors do, and thus I must learn from actors about their world. As Latour argues:

‘It is us, the social scientists, who lack knowledge of what they do, and not they who are missing the explanation of why they are unwittingly manipulated by forces exterior to themselves and known to the social scientist’s powerful gaze and methods’.⁹⁷

Following Latour, I use ANT in this thesis for two reasons. Firstly, I think ANT is a useful framework for mapping how relations between actors are translated through networked alliances. Secondly, I have not come across a study of the key actors in land reform across the Pacific. Hence, I was motivated to write a study of the key actors in land reform in Solomon Islands because it would provide another way of looking at land reform. A useful starting point to show how ANT is used to analyse actor relations in regard to land issues and reform is the work of Ambreena Manji who has explored network of actors in regard to land reform in Africa.⁹⁸ She draws on ANT through reference to Bruno Latour’s work on the Louis Pasteur laboratory, which illustrated the ways in which interests are translated through the ‘laboratory as an obligatory point of passage’ and the extent to which different elements of the process are inter-related.⁹⁹ Pasteur was able to influence and convince others that his

⁹⁷ Latour, B. (1999). ‘On Recalling ANT.’ *The Sociological Review*, 47(S1): 15-25, 21.

⁹⁸ Manji, *The Politics of Land Reform in Africa*.

⁹⁹ Manji, *The Politics of Land Reform in Africa*, 13.

vaccine was the solution to their anthrax problems and that if people needed the vaccine they would have to go to his laboratory.

Manji explains that ANT is a vital framework that could help in understanding ‘the work of law in development scholars who crafted for themselves a central role in post-independence development state’.¹⁰⁰ It also provides an important insight into contemporary land law reform processes in Africa by showing how technical legal consultants and international financial institutions have played a key role in promoting land law reform. This is also true in the Melanesian or Pacific states because the networks are readily small and often the Pacific land experts are a small group of individuals that know each other. But as Manji points out, while Latour’s sociology is helpful in explaining how the network of African land law reform occurred, it is less helpful in describing why this occurred. To address this limitation, Manji referred to the work of Cutler on the ‘role of law in neo-liberal globalisation’, which she finds useful because it provides the ‘juridical link’ between the global and local, and alerts us ‘to the ways in which the globalisation of law promotes certain values’.¹⁰¹

John Kelly, like Manji, draws on the actant concept in the Latourian sense to explore the life of Sir Arthur Gordon in Fiji and how his role as Governor during the early colonial period influenced land relations.¹⁰² These observations by Manji and Kelly apply to the Melanesian

¹⁰⁰ Manji, *The Politics of Land Reform in Africa*, 14.

¹⁰¹ Manji, *The Politics of Land Reform in Africa*, 18.

¹⁰² Kelly, J.D. (2004). ‘Gordon Was No Amateur: Imperial Legal Strategies in the Colonization of Fiji.’ In Merry, S.E. and Brenneis, D. (eds), *Law and Empire in the Pacific: Fiji and Hawai’i*. Oxford, James Currey Publishers, 61-100.

context and to the Pacific more broadly. As this thesis shows the transfer and translations of ideas between the global and local is shaped by actor background and networks. Drawing on ANT provides a means with which to explore the conceptual frames and networks that actors arriving in the Western Pacific brought with them, and allows to understand how they were required to modify and adapt these frames in their engagement with the frontier and with Solomon Islanders.

2.3.2 The Frontier

Interactions between Islanders and Europeans were profoundly shaped by early encounter experiences which were often, though not always, mediated through violence. The eminent American historian, Frederick Jackson Turner, developed the concept of the frontier in a speech in 1893, describing it as ‘the outer edge of the wave – the meeting point between savagery and civilisation’.¹⁰³ Turner’s description of the frontier in one sense ‘was given by a measure of population density, less than two people per square mile being considered empty’ – free land or unoccupied land. It might also mean ‘open space, lands disposed to settlement, lands that were always cheap and frequently free’ and the location for ‘disruption or change or evolution’ that ‘transformed man and society’.¹⁰⁴

Recent researchers have reoriented the frontier concept, shifting attention from ‘edges of advance, to zones of contact and interaction’.¹⁰⁵ Nicholas Blomley has redefined the frontier

¹⁰³ Schon, R. and Galaty, M.L. (2006). ‘Diachronic Frontiers: Landscape Archaeology in Highland Albania.’ *Journal of World Systems Research*, 12(2): 231-262, 231.

¹⁰⁴ Coleman, W. (1966). ‘Science and Symbol in the Turner Frontier Hypothesis.’ *The American Historical Review*, 72(1): 22-49, 23.

¹⁰⁵ Schon and Galaty, ‘Diachronic Frontiers’, 231.

as ‘sites of struggle and violence’,¹⁰⁶ while David Weber explains that ‘frontiers’ sometimes ‘represent a place, sometimes a process, and sometimes a condition’.¹⁰⁷ Tracey Banivanua-Mar, in her work on labour trafficking in the Pacific, describes the Western Pacific as ‘a frontier ‘contact zone’ where relations of power were negotiated in ways that retained an inherent potential for violence ... such violence was variously positioned as both a cause and a symptom of frontier spaces’.¹⁰⁸

According to Banivanua-Mar, these frontier spaces were sites of legal ambiguity; they ‘exacerbated a sense of disorder that compelled ever more efficient expansion of colonial influence under a broad justifying narrative of the civilizing mission bringing order, stability and security to the disorder and primitiveness of the frontiers and beyond’.¹⁰⁹ Such frontier contact zone narratives played a significant role in shaping British colonial strategy in Solomon Islands, although British policy during this period consciously adopted an approach of minimal intervention. How these frontier spaces impacted on local institutions and Islanders is an issue that I will discuss in Chapter 3.

The notion of the contact zone, like that of the frontier, refers to the interactions between Indigenous people and settlers. Reference is often made to Greg Denning’s notion of the beach as a ‘metaphor for the different ways in which people build their worlds and for the

¹⁰⁶ Blomley, N.K. (1997). ‘Property, Pluralism and the Gentrification Frontier.’ *Canadian Journal of Law and Society*, 12(2): 187-218, 188.

¹⁰⁷ Weber, D.J. (1986). ‘Turner, the Boltonians, and the Borderlands.’ *The American Historical Review*, 91(1): 66-81, 67.

¹⁰⁸ Banivanua-Mar, T. (2009). ‘Frontier Space and the Reification of the Rule of Law: Colonial Negotiations in the Western Pacific, 1870-74.’ *The Australian Feminist Law Journal*, 30(1): 23-39, 26.

¹⁰⁹ Banivanua-Mar, ‘Frontier Space and the Reification of the Rule of Law’, 39.

boundaries they place around them. The island is a world, the beach is its boundary'.¹¹⁰ The beach is the space that separates the land from the sea and it becomes 'a contact zone when ships dropped anchor'.¹¹¹ Dening's notion of the beach draws attention to the nature of the space for all forms of engagement and exchange that opened up between Solomon Islanders and colonial actors, whereas the concept of 'frontier' has tended to emphasise violent confrontation.¹¹² Michelle Ellery proposes that the 'beach functions both as a literal space to be crossed and as a metaphor for the cultural adjustment through which the Westerner negotiated the tension between his own society's values and hierarchies, now rendered unintelligible, and the values and hierarchies of the society within which he must operate to survive or to profit'.¹¹³

I suggest that a space can be both a frontier and beach under different conditions. This was the space in which the experiences of encounter between Solomon Islanders and British and other Europeans unfolded. These experiences 'were often occasions of ... misunderstanding and extreme violence' that shaped how both sides of the encounter perceived and interacted with each other. Missionaries, traders, labour recruiting ships and Royal Naval ships were amongst the principal external actors who had encounters with Islanders. Trading activities

¹¹⁰ Hanlon, D.L. (1981). 'Dening Greg, Islands and Beaches, Discourse on a Silent Land: Marquesas 1774-1880 (review).' *Journal de la Société des Océanistes*, 37(70-71): 123-124, 213.

¹¹¹ Schürmann, F. (2012). 'Ships and Beaches as Arenas of Entanglements from Below: Whalemen in Coastal Africa, c. 1760-1900.' *InterDisciplines: Journal of History and Sociology*, 3(1): 25-47, 32.

¹¹² Schürmann, 'Ships and Beaches as Arenas of Entanglements from Below', 32.

¹¹³ Elleray, M. (2005). 'Crossing the Beach: A Victorian Tale Adrift in the Pacific.' *Victorian Studies*, 47(2): 164-173, 165.

that were central to the encounter experiences were shaped for Europeans by racial evaluations and stereotypes of Islanders.

The kidnapping or recruiting of Islanders to work on the plantations in Queensland and Fiji was an important catalyst in exacerbating violence. A wealth of literature has addressed the traffic in Islander labour, highlighting violence in the form of retaliation and counter retaliation,¹¹⁴ commonly involving Islanders avenging the loss of their men and women as a result of the labour trade. The labour trade and exchange of goods ‘for exportable produce, local food, labour and the use or acquiring of the land’¹¹⁵ took place at the cost of lives of both traders and Islanders. Experiences and reports of violence then fed back into the frontier frames of key actors, shaping the nature of their responses, and reinforcing narratives of the need for settlement, law and order and civilisation.

According to Banivanua-Mar, violence is ‘conceptually separated from the civilized colonial project by being boxed off as the product of chaos and lack of rationality of other times long ago, or the savageness of areas beyond the reach of civilization’s folds’.¹¹⁶ She explains that the responses of Islanders in the:

¹¹⁴ Allan, C.H. (1957). *Customary Land Tenure in the British Solomon Islands Protectorate: Report of the Special Lands Commission*. Honiara, Western Pacific High Commission; Stewart, P. J. (1961). ‘New Zealand and the Pacific Labor Traffic, 1870-1874.’ *Pacific Historical Review*, 30(1): 47-59; Corris, P. (1968). ‘Blackbirding’ in New Guinea Waters, 1883-84: An Episode in the Queensland Labour Trade.’ *The Journal of Pacific History*, 3: 85-105; Corris, P. (1973). *Passage, Port and Plantation: A History of Solomon Islands Labour Migration, 1870-1914*. Melbourne, Melbourne University Press; Moore, C. (1981). *Kanaka Maratta: A History of Melanesian Mackay*. James Cook University, PhD Thesis; Bennett, J.A. (1987). *Wealth of the Solomons: A History of a Pacific Archipelago*. Honolulu, University of Hawaii Press; Munro, D. (1995). ‘The Labor Trade in Melanesians to Queensland: An Historiographic Essay.’ *Journal of Social History*, 28(3): 609-627; Banivanua-Mar, T. (2007). *Violence and Colonial Dialogue: The Australian-Pacific Indentured Labor Trade*. Honolulu, University of Hawaii Press.

¹¹⁵ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 31.

¹¹⁶ Banivanua-Mar, T. (2005). ‘Consolidating Violence and Colonial Rule: Discipline and Protection in Colonial Queensland.’ *Postcolonial Studies*, 8(3): 303-319, 307.

forms of resistance, retaliation or negotiations ... were rarely recognized as political or rational interactions with colonial projects, but were rather seen as mindless, indiscriminate and unpredictable explosions of violence to which cannibals were prone.¹¹⁷

Such violence is regarded as happening beyond the frontier, described by Nicholas Blomley as ‘the space of the savage... one of the absence of law and property and the concomitant presence of violence.’¹¹⁸

Elaborating on the frontier concept, Blomley asserts that ‘inside the *frontier* lie secure tenure, fee-simple and state guaranteed rights to property. Outside lie uncertain and undeveloped entitlements, communal claims and the absence of state guarantees of property’.¹¹⁹ The frontier is associated with state formation, the legitimising of violence and the alienation of land through state rules of property. Blomley explains that the creation of property regimes ‘is often predicated upon the mobilisation of violence’.¹²⁰ The violence of property is part of the dispossession process because, at ‘its core, property entails the legitimate act of expulsion, devolved to the state’.¹²¹ Blomley shows that property is a form of violence that shapes the kinds of property regime ‘that lie within the frontier and those that lie without’.¹²² In thinking through Blomley’s work, it seems useful to focus on historical actors such as

¹¹⁷ Banivanua-Mar, ‘Frontier Space and the Reification of the Rule of Law’, 26.

¹¹⁸ Blomley, N.K. (2003). ‘Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid.’ *Annals of the Association of American Geographers*, 93(1): 121-141, 124-5.

¹¹⁹ Blomley, ‘Law, Property, and the Geography of Violence’, 124.

¹²⁰ Blomley, ‘Law, Property, and the Geography of Violence’, 126.

¹²¹ Blomley, ‘Law, Property, and the Geography of Violence’, 130.

¹²² Blomley, ‘Law, Property, and the Geography of Violence’, 135.

Woodford in order to understand how their conceptual frames shaped the property systems established within the Solomon Islands frontier.

Stuart Banner discusses the transition of property systems in terms of a politics of colonisation based on the 'rule of thumb'.¹²³ To drive the formal transition process, colonisers applied a rough and ready rule of thumb to choose amongst likely winners and losers. The higher 'administrative costs of ascertaining the value of everyone's rights under the old system and locating equivalent rights under the new one' led:

managers of the transitions... to cut some corners. They had to adopt rules of thumb that would drive the costs of valuation and assignment low enough to make the transition feasible. This is where political hierarchy became important, because the people running the switch had the power to choose the rules of thumb.¹²⁴

This notion of a rule of thumb fits well with my analysis of the role of actors, as a basis for explaining how and why they opted for particular choices in determining the kinds of property regime that should be introduced to Solomon Islands. Frontier conditions and depopulation debates shaped actors' choices. The apparent depopulation, for example, gave rise to contrasting interpretations of likely causes: both local and exogenous factors were proposed as the principal causes of depopulation.¹²⁵ Warfare or violence, black magic, poor housing and customs relating to child bearing and rearing were identified as local factors

¹²³ Banner, S. (2002). 'Transitions between Property Regimes.' *The Journal of Legal Studies*, 31(S2): 359-371.

¹²⁴ Banner, 'Transitions between Property Regimes', 363-364, 368.

¹²⁵ Jolly, M. (1998). 'Other Mothers: Maternal 'Insouciance' and the Depopulation Debate in Fiji and Vanuatu, 1890-1930.' In Ram, K. and Jolly, M. (eds), *Maternities and Modernities: Colonial and Postcolonial Experiences in Asia and the Pacific*. UK, Cambridge University Press, 177-212. For calculation of population density in Marovo during the frontier era see: Bayliss-Smith, T., Hviding, E., and Whitmore, T. (2003). 'Rainforest Composition and Histories of Human Disturbance in Solomon Islands.' *Ambio*, 32(5): 346-352.

causing depopulation. But the consensus among most writers reporting on depopulation in Melanesia was that Europeans were the actors primarily responsible for declining numbers.¹²⁶

Though some pointed out that depopulation was already under way before European contact, Europeans were clearly held responsible for introducing epidemics, alcohol and clothing which impacted on people's health, and the firearms which played a part in the increase in warfare; and each of these factors exacerbated the mortality rate.¹²⁷ The idea that clothing exacerbated the mortality rate is an old colonial trope, intended to forbid Islanders from being too much like Europeans. Depopulation in various parts of Solomon Islands was brought about almost entirely by introduced diseases to which people had little or no resistance. As Tim Bayliss-Smith points out in reference to Ontong Java there was no doubt that population pressure was experienced at various times. But population declined due to local factors such as abortion, and perhaps extreme cases of infanticide. It became catastrophic due to contact with European whaling ships and traders who introduced diseases such as influenza and malaria.¹²⁸

¹²⁶ Rivers, W.H.R., (ed.) (1922). *Essays on the Depopulation of Melanesia*. Cambridge, University Press; Buxton, P. A. (1926). 'The Depopulation of the New Hebrides and Other Parts of Melanesia.' *Transactions of the Royal Society of Tropical Medicine and Hygiene*, 19(8): 420-458; Pitt-Rivers, G.H.L.F. (1927). *The Clash of Culture and the Contact of Races: An Anthropological and Psychological Study of the Laws of Racial Adaptability, with Special Reference to the Depopulation of the Pacific and the Government of Subject Races*. London, George Routledge; Hogbin, H.I. (1930). 'The Problem of Depopulation in Melanesia as Applied to Ontong Java (Solomon Islands).' *The Journal of the Polynesian Society*, 39(1): 43-66; Hamlin, H. (1932). 'The Problem of Depopulation in Melanesia.' *The Yale Journal of Biology and Medicine*, 4(3): 301-321.

¹²⁷ Roberts, S.H. (1927). *Population Problems of the Pacific*; Hamlin, 'The Problem of Depopulation in Melanesia.'

¹²⁸ Bayliss-Smith, T.P. (1974). 'Constraints on Population Growth: The Case of the Polynesian Outer Atolls.' *Human Ecology*, 2(4): 259-295.

Another cause identified for depopulation was the so-called ‘psychological factor’, promoted by W.H.R Rivers, which argued that Islanders had an innate tendency to become disillusioned with life, causing a decline in birth rates.¹²⁹ Rivers, who had a medical background, proposed that Melanesians ‘were suffering from a kind of ‘shell-shock’ as a result of colonial traumas’.¹³⁰ Such a theory promotes a Eurocentric mind set of inferior-superior complexes whereby colonised races perish due to their primitive mental capacity while the colonisers survive.¹³¹ The psychological causes attributed to European contact were also held to have shaped a ‘general insouciance for the native mind’ along with a ‘growing disinclination to bear children’ which was associated with the notion of bad mothering.¹³²

But, as noted by Christine Dureau, the change in population figures in Simbo, Western Solomon Islands, was clearly influenced by epidemiological changes. She cautions that claims that ‘births were restricted by ritualized celibacy, contraceptives, abortifacients, and infanticide must be pondered in the context of the epidemiology of the time’.¹³³ Tim Bayliss-

¹²⁹ Rivers, W.H.R. (1922). ‘The Psychological Factor.’ In Rivers, W.H.R. (ed.), *Essays on the Depopulation of Melanesia*, 84-113.

¹³⁰ Bayliss-Smith, T. (2014). ‘Colonialism as Shell-Shock: WHR Rivers’ Explanations for Depopulation in Melanesia.’ In Hviding, E. and Berg, C. (eds), *The Ethnographic Experiment: A.M. Hocart and W.H.R. Rivers in Island Melanesia, 1908*. New York, Berghahn Books, 179-213, 194; see also Bennett, J.A. (2014). ‘A Vanishing People or a Vanishing Discourse? W.H.R. Rivers’s ‘Psychological Factor’ and the Depopulation of the Solomon Islands and the New Hebrides.’ In Hviding, E. and Berg, C. (eds.), *The Ethnographic Experiment: A. M. Hocart and W.H.R. Rivers in Island Melanesia, 1908*. New York, Berghahn Books. 214-251.

¹³¹ Blyton, G. (2009). ‘Seeds of Myth: Exotic Disease Theory and Deconstructing the Australian Narrative of Indigenous Depopulation.’ *The Australian Journal of Indigenous Education*, 38(Supplementary): 17-24.

¹³² Jolly, M. (2001). ‘Infertile States: Person and Collectivity, Region and Nation in the Rhetoric of Pacific Population.’ In Jolly, M. and Ram, K. (eds), *Borders of Being: Citizenship, Fertility, and Sexuality in Asia and the Pacific*. USA, University of Michigan Press, 262-306, 277-8.

¹³³ Dureau, C.M. (2001). ‘Mutual Goals? Family Planning on Simbo, Western Solomon Islands.’ In Jolly, M. and Ram, K. (eds), *Borders of Being: Citizenship, Fertility, and Sexuality in Asia and the Pacific*, 232-261, 237.

Smith has also challenged Rivers' psychological factor model as unconvincing, providing evidence that ships had visited Simbo frequently during the 1860s and 1870s, well prior to sustained European settlement, leading to an increased likelihood of disease transmission.¹³⁴ There is also evidence indicating the 'effects of STIs on spontaneous abortion (miscarriage) and sterility were combined with the effects of epidemic disease on mortality rates'.¹³⁵

Early ideas about depopulation reveal the different interpretations advanced by actors to explain why Islander numbers were declining.¹³⁶ For example, colonial officers on Malaita during the 1930s referred to the psychological factor to explain that Islanders were dying because 'they had lost interest in life' or were experiencing 'cultural fatigue' due to contact with the outside world.¹³⁷ The interpretation of depopulation was popular during a time when the doomed race theory had prominence in colonial circles, including in Australia.¹³⁸ The doomed race theory was premised on the perception that Islanders were on the verge of extinction, and that this was strongly determined by racial character. Dirk Moses notes that Indigenous people were placed at the lowest level on the race ladder, 'classing them as

¹³⁴ Bayliss-Smith, 'Colonialism as Shell-Shock'; see also Bayliss-Smith, T.P. (2006). 'Fertility and Depopulation of Melanesia: Childlessness, Abortion and Introduced Disease in Simbo and Ontong Java.' In Ulijaszek, S.J. (ed), *Population, Reproduction and Fertility in Melanesia*. New York, Berghahn Book, 13-52.

¹³⁵ Bayliss-Smith, 'Colonialism as Shell-Shock', 12.

¹³⁶ For an outline of the depopulation debate see Denoon, D., P. Mein-Smith, et al. (2000). *A History of Australia, New Zealand, and the Pacific*. Oxford, UK, Blackwell Publishers.

¹³⁷ Akin, D. (2005). 'Kastom as Hegemony? A Response to Babadzan.' *Anthropological Theory*, 5(1): 75-83, 77.

¹³⁸ McGregor, R. (1993). 'The Doomed Race: A Scientific Axiom of the Late Nineteenth Century.' *Australian Journal of Politics and History*, 39(1): 14-22; see also McGregor, R. (1997). *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880-1939*. Melbourne, Melbourne University Press; Denoon, Mein-Smith, et al, *A History of Australia, New Zealand, and the Pacific*.

savages ... [though] with guidance and Christianity, they could be eventually civilized'.¹³⁹ The common colonial assumption was that the extinction of Islanders was inevitable because they occupied a frontier space where 'the absence of state guarantees to property [led to] disorder, violence and "bare life"'.¹⁴⁰ Such stereotypes shaped emerging narratives around underused and unoccupied land as waste or vacant land in Solomon Islands, and informed how colonial actors chose particular policy options in the transition from customary to state controlled land.

2.3.3 Property Rights

British colonial positions on the relationship between political authority and property rights find their basis in the writings of John Locke, the English moral and political philosopher, and Henry George, the American political economist.¹⁴¹ Locke uses the concept of 'wasteland' to refer to 'uncultivated common property, which should be privatized to improve societal welfare'. Maintaining the productive capacity of the land is vital because, according to Locke, there is a moral dimension to the wasteland concept.¹⁴² He posits that property is a natural right bestowed by God: to waste land is thus immoral'.¹⁴³ Such reasoning

¹³⁹ Moses, A.D. (2000). 'An Antipodean Genocide? The Origins of the Genocidal Moment in the Colonization of Australia.' *Journal of Genocide Research*, 2(1): 89-106, 94.

¹⁴⁰ Blomley, 'Law, Property, and the Geography of Violence', 124; see also Stuart, A. (2002). *Parasites Lost? The Rockefeller Foundation and the Expansion of Health Services in the Colonial South Pacific, 1916-1939*. University of Canterbury, PhD Thesis.

¹⁴¹ Larmour, P. (1987) *Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policy Making and Implementation before and after Independence in Papua New Guinea, Solomon Islands and Vanuatu*. Macquarie University, PhD Thesis, Chapter 2.

¹⁴² Baka, J. (2013). 'The Political Construction of Wasteland: Governmentality, Land Acquisition and Social Inequality in South Africa.' *Development and Change*, 44(2): 409-428, 411.

¹⁴³ Baka, 'The Political Construction of Wasteland.'

provided justification for transforming the frontier or contact zone into ordered property right spaces, and shaped the land laws that were introduced to colonial possessions.¹⁴⁴

The theorising of property right can be traced back to the writings of scholars such as Scott Gordon, Ronald H. Coase, and Harold Demsetz.¹⁴⁵ One of the foundational elements of property rights is the 'liberal ownership model', which is premised on the concept of 'absolute right to exclude others'.¹⁴⁶ Daniel Fitzpatrick argues that, according to conventional law and economic theory which is premised on the evolutionary theory of property rights, the liberal ownership model will evolve towards individualisation and formalisation of land rights once resource values increase due to land scarcity and commercialisation.¹⁴⁷ However, he suggests, it is likely that this model will change to open access if there is a rise in resource value. Gareth Jones points out that policy and law makers continue to refer to the evolutionary theory of property rights as foundational for land reform processes without

¹⁴⁴ For a discussion of how Indigenous people in the Pacific and elsewhere were dispossessed due to the introduction of a colonial property right system see: Banner, S. (2007). *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska*. Harvard, Harvard University Press; see also Banner, S. (2005). 'Why Terra Nullius? Anthropology and Property Law in Early Australia.' *Law and History Review*, 23(1): 95-131.

¹⁴⁵ Gordon, H.S. (1954). 'The Economic Theory of a Common-Property Resource: The Fishery.' *Journal of Political Economy*, 62(2): 124-142; Coase, R. H. (1960). 'The Problem of Social Cost.' *The Journal of Law & Economics*, 3: 1-44; Demsetz, H. (1967). 'Toward a Theory of Property Rights.' *The American Economic Review*, 57(2): 347-359.

¹⁴⁶ Jackson, N. and Wightman, J. (2002). 'Spatial Dimensions of Private Law.' In Holder, J. and Harrison, C. (eds), *Retrospect, Law and Geography*. Oxford, Oxford University Press: 35-64, 53.

¹⁴⁷ Fitzpatrick, 'Evolution and Chaos in Rights Systems.'

considering either the ‘notion of power’ or the ‘spatiality of power implicit in the rule of law’.¹⁴⁸ The concept of power, according to Bruno Latour:¹⁴⁹

is not about the dominance of social agents who have power as if it is an object that can be topped up and diffused until the inertia evaporates it or resistance overpowers it. Rather, power is a dynamic social relation that exists only when exerted and people respond; it is a consequence, not a cause, of action.

He argues that ‘as power is translated, there is no initial source of power that is diffused, but everyone involved adds energy to the idea, claim, or rule’, power being understood within the terms of ANT.

2.4 Conclusion

This chapter has provided a review of the pertinent literature on land reform. Through this review, it becomes apparent that economic incentives have been the main drivers for land reform approaches. These approaches have promoted the idea of transforming customary land to property through an enactment that is either representational, material or practical.¹⁵⁰ Central to this process is the introduction of land laws to change landholding arrangements over property. I seek to unpack this process by drawing on ANT as a frame to understand the important role played by actors in decisions about land policy and reform. In this way, ANT provides a measure of land reform success based on the extent to which land reform has managed to mobilise alliances.

¹⁴⁸ Jones, G.A. (2002). ‘Camels, Chameleons, and Coyotes: Problematizing the ‘Histories’ of Land Law Reform.’ In Holder, J and Harrison, C. (eds), *Retrospect, Law and Geography*. Oxford, Oxford University Press, 184.

¹⁴⁹ Jones, ‘Camels, Chameleons, and Coyotes’, 184-5.

¹⁵⁰ Blomley, N. (2004). *Unsettling the City: Urban Land and the Politics of Property*. New York, Routledge.

In this chapter I have discussed how actors promoted the transition of property based on practical considerations, or the ‘rule of thumb’. I argue that this ‘rule of thumb’ was also powerfully shaped by conceptual perspectives on the conditions of a ‘frontier’ associated with violence, depopulation and property. My use of ANT extends the analysis of land reform not only by engaging in the debate on the influence of Western hegemony on land reform but also by showing how particular actors, nodes of network and places matter. Although the conceptual framing of land reform is shaped by Western hegemony, that hegemony is neither consistent, universal, nor generalisable – it plays out in different ways in different contexts. This thesis thus pays particular attention to the individual actors who were involved in transmitting and translating the specific ideas that shaped land reform in Solomon Islands.

CHAPTER 3. Colonialism, Land Law and the Resident Commissioner:

Charles Morris Woodford

3.1 Introduction

Much of the analysis of the development of land policy and law in Solomon Islands is depersonalised. What I seek to add to the debate is a close examination of who was involved, what influenced them and what their approaches were. Using the framework of ANT, this will involve analysing closely the background and actions of C.M. Woodford, as Britain's first Resident Commissioner in the British Solomon Islands Protectorate (BSIP). Viewed through an ANT lens, the BSIP functioned as a laboratory within which Woodford developed his own interpretation of colonial land law as a means to encourage large scale capitalist plantation development. For Woodford, land law was a central component in the establishment of the BSIP. While much has been written about his early role as a naturalist and then a government administrator in Solomon Islands, little has been written about Woodford's role in the development of colonial land policy and law.¹

¹ For Woodford's publication regarding his role as a naturalist see: Woodford, C.M. (1890a). *A Naturalist among the Headhunters: Being an Account of Three Visits to the Solomon Islands in the Years 1886, 1887, and 1888*. London, George Philip; Woodford, C.M. (1888). 'Exploration of the Solomon Islands.' *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, 10(6): 351-376; Woodford, C.M. (1890b). 'Further Explorations in the Solomon Islands.' *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, 12(7): 393-418; see also Ian Heath's research on Woodford's role in BSIP: Heath, I.C. (1974). *Charles Morris Woodford of the Solomon Islands: A Biographical Note, 1852-1927*. Australian National University, MA Thesis; Heath, I.C. (1981). *Land Policy in Solomon Islands*. La Trobe University, PhD Thesis. For more recent literature on Woodford see: O'Brien, A. (2011). 'Collecting the Solomon Islands: Colonial Encounters and Indigenous Experiences in the Solomon Island Collections of Charles Morris Woodford and Arthur Mahaffy (1886-1915).' University of East Anglia, PhD Thesis; O'Brien, A. (2013). 'Charles Morris Woodford and Solomon Islands.' In Bolton, L., Thomas, N., Bonshek, E., Adams, J. and Burt, B. (eds), *Melanesia: Art and Encounter*. London, British Museum Press, 215-219; and Lawrence, D.R. (2014). *The Naturalist and his 'Beautiful Islands': Charles Morris Woodford in the Western Pacific*. Canberra, Australian National University Press.

Although Woodford was a key actor during this early period, other people and groups were also influential. These ‘actors’ included the Colonial Office, the Western Pacific High Commission, various colonial officials and planters. Linking these actor-nodes or actants in a structure of causality are bonds that form a complex network. From the perspective of ANT, as discussed in chapter 2, the nodes within this network are the ‘Actors, and an Actor is any entity that interacts with other actors or serves as an intermediary [or mediator] between actors. ANT accepts humans and non-humans (objects) as actors, since all interactions between humans are mediated through objects of one type or another’.²

The central focus of this chapter is on Woodford as a key intermediary and mediator ‘between colonial authorities and local peoples and settlers’, although I will also make reference to other actors.³ One of Woodford’s more significant roles was that of translation in relation to early colonial land law, where translation refers to the process of negotiation or representation between actors within a network.⁴ Of equal importance to Woodford’s position was his link to the “Commodore Justice” of the Royal Navy, as an early mode of

² Comber, A., et al. (2003). ‘Actor–Network Theory: A Suitable Framework to Understand How Land Cover Mapping Projects Develop?’ *Land Use Policy*, 20(4): 299-309, 304. For examples of other studies that have used ANT see: Latour, B. (1987). *Science in Action: How to Follow Scientists and Engineers Through Society*. Harvard, Harvard University Press; Shah, R.C. and Kesan, J.P (November 6, 2007). ‘Analyzing Information Technology and Societal Interactions: A Policy Focused Theoretical Framework’. *Illinois Public Law Research Paper No. 07-12*. Chicago, University of Illinois; Manji, A. (2006). *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*. London and New York, Zed Books.

³ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 3.

⁴ Actor Network Theory is discussed in Chapter 2; see also: Murdoch, J. (1998). ‘The Spaces of Actor-Network Theory.’ *Geoforum*, 29(4): 357-374, 362; Murdoch, J. (2001). ‘Ecologising Sociology: Actor-network Theory, Co-construction and the Problem of Human Exemptionalism.’ *Sociology*, 35(01): 111-133; Callon, M. and Latour, B. (1981), ‘Unscrewing the Big Leviathan: How Actors Macrostructure Reality and Sociologists Help Them to Do So’. In Knorr-Cetina, K. and Cicourel, A.V. (eds), *Advances in Social Theory and Methodology: Towards an Integration of Micro- and Macro-Sociologies*. London, Routledge & Kegan Paul, 227-303; Lihosit, J. (2014). ‘Breaking Down the Black Box: How Actor Network Theory Can Help Librarians Better Train Law Students in Legal Research Techniques.’ *Law Library Journal*, 106(2): 211-220.

exercising colonial power in the Western Pacific and imposing the rule of law. In this respect, the Royal Navy functioned as the initial connection between violence and legal development. Central to this linkage is the changing nature of land through what Nicholas Blomley terms ‘the enactment of property’ to render land a commodity.⁵

There is an extensive literature on British colonial rule in the Pacific including the Solomon Islands, which I draw on here, together with original archival material, to reconstruct how this link between Woodford and the Royal Navy contributed to the early enactment of colonial land law and transformed customary land into a commoditised property available for capitalist development. I begin by examining Woodford’s role as an individual key actor, drawing on David Lawrence’s recent biography of Woodford. Secondly, I examine Woodford’s experiences during his scientific expeditions to Solomon Islands between 1886 and 1888. Thirdly, I examine the relationship between Woodford and the Royal Navy. Finally, I discuss the elements of this early network converged to generate colonial land law as part of the establishment of the Solomon Islands British Protectorate (BSIP).

3.2 Resident Commissioner

Charles Morris Woodford, the eldest son of Mr. Henry Pack Woodford, a prosperous wine and spirit merchant, was born on 30 October 1852 at Milton-next-Gravesend, a large economically important town on the southern banks of the Thames in Kent, England.⁶ He was educated at Tonbridge School from 1864 to 1877, where he developed an interest in

⁵ Blomley, N. (2002). ‘Mud for the Land.’ *Public Culture*, 14(3): 557-582, 558-559.

⁶ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 9; see also Heath, ‘Charles Morris Woodford of the Solomon Islands’, 8.

natural history and collected butterflies, a hobby in which he was encouraged by the school Headmaster, Rev Dr James Welldon; Welldon regarded natural history as a skill necessary for students should they venture out to the colonies.⁷ The novels of Captain Mayne, which contained tales of adventures in Africa, America and the Pacific, and to which Woodford had access, may also have contributed to his desire for travel.⁸ These factors were part of the chain of social interactions that moulded Woodford from a student of natural history into an explorer, a collector and a colonial administrator. They were the elements that Woodford built on to become a key intermediary and mediator between colonial authorities, European settlers and local people.

Under somewhat obscure circumstances, Woodford left England in 1881 to travel to the Western Pacific, arriving in Suva in 1882.⁹ He visited the Gilbert (Kiribati) and Ellice (Tuvalu) island groups in 1884 and ‘acted as a Government Agent on the *Patience*, a 40 tonne ketch chartered to return home 45 Gilbertese labourers stranded in Fiji’.¹⁰ Woodford started expressing his views about violence on the Gilbert and Ellice frontier through a ‘series of long detailed letters to his mentor in Fiji, John Bates Thurston, then Assistant High Commissioner for the Western Pacific’.¹¹ Later, Woodford explored Melanesia on three occasions during 1886, 1887 and 1888. Most of his collection of more than 17,000 objects

⁷ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 11.

⁸ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 9.

⁹ Lawrence, D.R., Moloney, K., and Bryan, C. (2015). ‘From the Archives.’ *The Journal of Pacific History*, 50(4): 1-14, 1.

¹⁰ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 27.

¹¹ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 29.

was purchased by the British Museum of Natural History in London.¹² In nine diaries, Woodford provided a detailed account of his personal experiences, describing the few Europeans he met, the local inhabitants with whom he lived, the places he explored and the state of affairs in the region.¹³ Woodford's early expeditions brought him into contact with the issues of violence and depopulation.

Woodford's first trip to the Solomon Islands began in Fiji, where he arrived on 17th February 1886 and made contact immediately with the Governor, Sir John Bates Thurston, seeking official permission to travel to Solomon Islands. Woodford knew of Thurston through their correspondence in 1884 on conditions in the Gilbert and Ellice Islands; despite this familiarity, Woodford was still required to formally request official permission. Thurston duly facilitated Woodford's trip to Solomon Islands on board the *Christine*, a small schooner returning '120 natives back to their home villages in New Hebrides, Solomon Islands and Lord Howe group'.¹⁴ His visit to Fiji not only provided Woodford with an opportunity to meet representatives of the colonial government but also created a network on which he drew when he subsequently applied for the position of Resident Commissioner for the British Solomon Islands Protectorate.

Woodford's three early visits to Solomon Islands gave him the opportunity to create personal networks amongst the European crews and traders on board the ships he travelled on, as well

¹² For a detailed discussion of Woodford's collections see Lawrence, *The Naturalist and His 'Beautiful Islands'*.

¹³ Woodford, *A Naturalist among The Headhunters*.

¹⁴ Woodford, 'Exploration of the Solomon Islands', 354.

as with the few Europeans who resided either permanently or temporarily in the islands. European residents in the islands were constantly confronted with danger because of the violence associated with ‘communities [that] were culturally oriented around head hunting’.¹⁵ Woodford’s experience while exploring the islands and interacting with both Europeans and Solomon Islanders grounded him solidly in the security issues, law and order problems and dynamic nature of social relations in the region. The knowledge he gained about life in the Solomon Islands would be put to good use when he became Resident Commissioner in BSIP in 1896.

Solomon Islands would become something of a laboratory for Woodford in his management of the transition of property rights from a series of customary land regimes to a uniform state-supported property rights system, reflecting the convergence of a range of different interests. Woodford was ‘both a client of and a broker between the Colonial Office in London and the Western Pacific High Commission in Suva’,¹⁶ and yet his ‘personal and professional relations with senior officials in both agencies often led to difficulties and personal conflicts’.¹⁷ Woodford was thus a central actor driving the initial process of land tenure translation in the British Solomons, and his actions are both a necessary and appropriate lens through which to understand this formative period in the history of Solomon Islands land tenure conversion.

¹⁵ Scarr, D. (1967). *Fragments of Empire: A History of the Western Pacific High Commission, 1877-1914*. Canberra, Australian National University Press, 173.

¹⁶ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 3.

¹⁷ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 3.

3.3 Woodford's Experiences

Woodford was a key actor both before and after the declaration of the BSIP. His early taste for the collection of fauna and adventure in unexplored territory expanded over time to the administration of law and government, initially in Gilbert and Ellice Islands, Samoa and then in the BSIP. This experience provided Woodford with a broad base with which to create connections and networks with various actors. These networks in turn guided and assisted Woodford by directing where he should go and whom he should contact while he was collecting natural history specimens,¹⁸ documenting local artefacts and observing the local population and their activities.¹⁹ When Woodford visited Alu in the Shortland Islands in 1886 he stayed with a local leader, Gorai. This arrangement was based on advice from Dr. Henry Guppy, a former medical officer on the British naval vessel HMS *Lark* who knew Gorai and considered him reliable.²⁰ Guppy provided Woodford with a letter of introduction to Gorai and local traders also recommended him as a reliable support in the northern islands. It was through such networks that Woodford became uniquely positioned to experience the frontier and its associated depopulation and violence.

3.3.1 Woodford on the Frontier

Woodford's experience reflected his position as a member of a very small group of Europeans who had early close encounters with Solomon Islanders. Such encounters were shaped by 'frontier conditions' that 'bred frontier attitudes among the Europeans, who often

¹⁸ Woodford, *A Naturalist among The Headhunters*.

¹⁹ Woodford, *A Naturalist among The Headhunters*; see also Lawrence, *The Naturalist and his 'Beautiful Islands'*.

²⁰ Woodford, *A Naturalist among The Headhunters*, 17.

became a law unto themselves'.²¹ The frontier was the space in which the worlds of Solomon Islanders and Europeans came into contact prior to the full imposition of colonial law and administration.²² Frontiers are artefacts of 'technology and imagination', which are 'imagined or constructed as sites of bountiful emptiness'.²³ These are sites that materially 'function as the territorial boundary of property and state formation. Inside the frontier, land is converted into property, mapped, marked and regulated by the state. Outside the frontier lie customary landscapes, mapped and marked as *kastom* places'.²⁴

Bronwen Douglas describes the encounter experience as a 'fluid, embodied, situated episode involving multiple personal relationships'²⁵ between the ship men and coastal dwellers. Douglas writes that the meanings and understandings derived from such experience 'were sometimes opposed and often mutually ambiguous but, for all concerned, they provided stimuli for acting, including representing'.²⁶ Her framing of encounter as a stimulus for acting and representing is a useful reference point for understanding the nature and extent of interactions between Europeans and Solomon Islanders and the ways in which they perceived

²¹ Bennett, J.A. (1987). *Wealth of the Solomons: A History of a Pacific Archipelago*. Honolulu, University of Hawaii Press, 109.

²² Ian Scales provides a detailed study on how Solomon Islanders operated trade networks: Scales, I. (2003). *The Social Forest: Landowners, Development Conflict and the State in Solomon Islands*. Australian National University, PhD Thesis, 127.

²³ Li, T.M. (2014). What is Land? Assembling a Resource for Global Investment. *Transactions of the Institute of British Geographers* 39(4): 589-602, 592.

²⁴ McDonnell, S. (2016). *My Land, My Life: Property, Power and Identity in Land Transformations in Vanuatu*. Australian National University, PhD Thesis, 9.

²⁵ Douglas, B. (2014). 'Naming Places: Voyagers, Toponyms, and Local Presence in the Fifth Part of the World, 1500–1700.' *Journal of Historical Geography*, 45 (0): 12-24, 13.

²⁶ Douglas, 'Naming Places', 13.

each other on the frontier. The encounter experiences, as Margaret Jolly and Serge Tcherkétoff highlight, ‘were often occasions of tumultuous misunderstanding and extreme violence’ that shape how both sides of the encounter perceive and interact with each other.²⁷

Rebecca Monson highlights how trading activities impacted on Islander power structures, negotiations around natural resources, access to economic opportunities and other opportunities such as educational training facilitated through missionisation.²⁸ Previous research has documented the nature and extent of early trading activities, which can be understood as unfolding in two stages. The first stage of trading was labour trade or the exchange of goods for men and women. The second stage of trading involved the exchange of a wider range of material goods such as firearms, as well as the sale of customary land.²⁹

Woodford provides a detailed account of such activities based on his experience of being a Government Agent on board the *Christine*, a ship from Fiji that was involved in the labour trade and heading to the Solomon Islands in 1886. In describing the methods used by the labour recruiter operated when approaching coastal villages, he explained that two boats were lowered to meet the Islanders. The men on both boats were fully armed in case of incidents.

²⁷ Jolly, M. and Tcherkétoff, S. (2009). ‘Oceanic Encounters: A Prelude.’ In Jolly, M., Tcherkétoff, S. and Tryon, D. (eds), *Oceanic Encounters: Exchange, Desire, Violence*. Canberra, ANU ePress, 1-36, 1.

²⁸ Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis, 118-119.

²⁹ For literature on trade see: Bennett, *Wealth of the Solomons*; Bennett, J.A. (2000). *Pacific Forests: A History of Resource Control and Contest in Solomon Islands, c.1800-1999*. Cambridge, White House Press; Moore, C. (1992). ‘Revising the Revisionists: The Historiography of Immigrant Melanesians in Australia.’ *Pacific Studies*, 15(2): 61-86; Monson, *Hu Nao Save Tok?* One of the traders who had a tremendous influence on customary land sales was Oscar Svensen from Norway. For literature on Oscar Svensen see Bennett, J.A. (1981). ‘Oscar Svensen: A Solomons Trader among ‘the few’.’ *The Journal of Pacific History*, 16 (4): 170-189; and also Hviding, E. (2015). ‘Adventurous Adaptability in the South Sea: Norwegians in ‘the Terrible Solomons’, ca. 1870-1930.’ In Kjerland, K.A. and Bertelsen, B.E. (eds), *Navigating Colonial Orders: Norwegian Entrepreneurship in Africa and Oceania*. Oxford and New York, Berghahn Books, 187-218.

On one boat was the labour recruiter, who stood up in the stern of the boat and traded with the Islanders while his crew sat ready at the oars in case they were given order to pull off if they were attacked. Apart from the recruiter's dinghy, the other boat with the Government Agent on board kept offshore and provided cover in case of attack.³⁰ Woodford was aware of the level of violence associated with both trading vessels and the labour recruitment ships through his work in the Fiji Immigration Department in 1883. He would have learned more about the violence associated with labour recruitment and trafficking through his contacts with men involved in the Solomons' labour trade.

The engagement of Islanders in trading activities with whalers, traders and labour recruiting ships, whether by consent or against their will, paved the way for land dealings. Contact with Islanders was sporadic at first, but there were reports of the early establishment of permanent and semi-permanent shore stations from around 1840. There were few resident traders operating in the Solomon Islands at this stage, and their numbers fluctuated. During the trading season there were seven resident traders in 1870, then only about four in 1875, six in 1880, ten in 1885 and fourteen in 1890, although the volume of trading interaction was much higher than this might suggest. These resident traders established a number of small trading stations, most located on small islands for security reasons, and manned on a temporary basis for at least a year.³¹

The resident traders established good relations with Indigenous people through social interaction or marriage, in regions where the image of the Islander was shaped by 'powerful

³⁰ Woodford, 'Exploration of the Solomon Islands', 355.

³¹ Bennett, *Wealth of the Solomons*, 59.

discursive representations of western Pacific islands as cannibal isles, and the home of black inferior and inherently lawless savages'.³² Such representation was shaped by frontier encounters and scientific perceptions of race. Scholars such as Judith Bennett described the interaction between traders and Islanders by highlighting that 'the trader who survived was the trader who could protect himself'.³³ The resident traders developed an understanding of Islander customs and the social organization of the communities they had ties to and through these networks were able to extend and create 'the markets for Western goods among Solomon Islanders, becoming specialists in the needs and greed of their customers'.³⁴

Woodford also had contacts amongst resident traders and frequently stayed with them. During Woodford's first expedition visit he stayed at Fauro in the Shortland Islands with a trader, J.C. Macdonald and his family who showed Woodford 'the greatest kindness and assistance during [his] stay'.³⁵ These kinds of interaction facilitated ongoing relationships between Woodford, the European resident traders and Islanders; these same established ties of friendship and trade also made it possible for resident traders to purchase land from Islanders more cheaply than other European investors or settlers, at least before the establishment of BSIP in 1893.³⁶

³² Banivanua-Mar, T. (2009). 'Frontier Space and the Reification of the Rule of Law: Colonial Negotiations in the Western Pacific, 1870-74.' *The Australian Feminist Law Journal*, 30(1): 23-39, 26.

³³ Bennett, *Wealth of the Solomons*, 60.

³⁴ Bennett, *Wealth of the Solomons*, 76-77.

³⁵ Woodford, 'Exploration of the Solomon Islands', 359.

³⁶ See Bennett, *Wealth of the Solomons*, 142.

3.3.2 Frontier Violence

Woodford had first-hand experience of the extent of the violence that was occurring in Solomon Islands on the frontier, and would certainly have been exposed to colonial racial portrayals of Islanders, to which he also contributed.³⁷ Bruce Knauff writes that such ‘European portrayals were not surprising ... since in early encounters successful Melanesian attacks were common and frequently punctuated by cannibalism, the taking of heads, or the seemingly gratuitous killing of shipwrecked crews’.³⁸ Bronwen Douglas and Chris Ballard maintain that ‘colonial racial evaluations were expressed mainly as judgments about native character, customs, lifestyle and capacity for progress – that is, relative savagery or civilisation’.³⁹ These evaluations, I argue, were crucial elements that informed Woodford’s conceptual frame and fed into the process of drafting the early colonial land law.

Woodford’s writings provide detailed accounts of the widespread violence that either existed within Islander communities or involved Islanders and Europeans.⁴⁰ When he made his way to the Solomon Islands in 1886 on board the *Christine*, the schooner arrived at Uru Bay, on the east coast of Malaita, and remained there from 20 to 25 May. Woodford reported that Uru

³⁷ For discussion on colonial perceptions of Islanders see for example Brantlinger, P. (2003). *Dark vanishings: Discourse on the Extinction of Primitive Races, 1800-1930*. London, Cornell University Press; Douglas, B. (2008). ‘Foreign Bodies in Oceania.’ In Douglas, B and Ballard, C (eds), *Foreign Bodies: Oceania and the Science of Race 1750-1940*. Canberra, ANU E Press, 3-30; Douglas, B. and Ballard, C. (2012). ‘Race, Place and Civilisation: Colonial Encounters and Governance in Greater Oceania.’ *The Journal of Pacific History*, 47(3): 245-262; Anderson, W. (2012). ‘Racial Hybridity, Physical Anthropology, and Human Biology in the Colonial Laboratories of the United States.’ *Current Anthropology*, 53(S5): S95-S107.

³⁸ Knauff, B.M. (1990). ‘Melanesian Warfare: A Theoretical History.’ *Oceania*, 60(4): 250-311, 251.

³⁹ Douglas and Ballard, ‘Race, Place and Civilisation’, 254.

⁴⁰ Woodford, ‘Exploration of the Solomon Islands’, 360; Woodford, ‘Further Explorations in the Solomon Islands’, 393-418; Woodford, *A Naturalist among The Headhunters*.

Bay was where the *Borealis*, another labour schooner, had been attacked by Islanders in October 1880, about six miles from where the *Janet Stuart* had earlier been attacked in 1882. During this period Woodford reported that another vessel was attacked nearby by Islanders from Mole, and five Europeans as well as several Islanders were killed.⁴¹ These instances of violence were often presented as warfare which, according to Bruce Knauff, denotes a 'collective armed conflict between putatively autonomous political groups'.⁴² While I agree with Knauff, I think this was quite generalised because in some instances the violence was caused by individuals. The *Borealis* incident was one such example, where Maeasuaa, a Kwaio fighting leader, was held to be responsible for the attacks. The 'success of the attacks made Maeasuaa respected and raised his status. This made other men eager to attack labour vessels in the hope of raising their status in their communities'.⁴³

Numerous studies have examined the interplay between violence and warfare⁴⁴ and in Melanesia 'it is often difficult to separate interpersonal violence from war since a conflict between two individuals often escalates into a war between villages or other corporate entities'.⁴⁵ Past studies reconstructing the nature of warfare in various parts of Melanesia have revealed that it was both pervasive and often associated with cannibalism, head hunting

⁴¹ Woodford, 'Exploration of the Solomon Islands', 356.

⁴² Knauff, 'Melanesian Warfare', 251.

⁴³ Lawrence, *The Naturalist and His 'Beautiful Islands'*, 78.

⁴⁴ Howe, K. (1974). 'Firearms and Indigenous Warfare: A Case Study.' *The Journal of Pacific History*, 9 21-38; see also Knauff, 'Melanesian Warfare'; and Maschner, H.D. and Reedy-Maschner, K.L. (1998). 'Raid, Retreat, Defend (repeat): The Archaeology and Ethnohistory of Warfare on the North Pacific Rim.' *Journal of Anthropological Archaeology*, 17(1): 19-51.

⁴⁵ Maschner and Reedy-Maschner, 'Raid, Retreat, Defend (repeat)', 20.

or retaliation practices.⁴⁶ Such practices, as noted by Knaft, ‘...had strong ritual and cosmological significance in some societies’.⁴⁷ Headhunting practices also had a political dimension. Soga, a powerful big man on the island of Isabel was ‘...a notorious warrior who had established wide political influence, in part by carrying out headhunting raids against other regions of Santa Isabel and surrounding islands’.⁴⁸ Soga later converted to Christianity and protected the early missionaries who settled in his region. This gave him further status and he used that to expand his social and economic ties.⁴⁹

Woodford’s expeditions placed him in a unique position to observe Solomons warfare in the form of head hunting and retaliatory raids then occurring in the western islands. During his first expedition in 1886 he stayed at Rubiana (now Roviana) in New Georgia. He described the area as ‘the centre of the headhunting district’ and the people were ‘notorious headhunters and cannibals’.⁵⁰ In some of the villages that Woodford visited, he discovered nearly all the men were ‘away on a head-hunting expedition to the island of Ysabel’.⁵¹ During the time he spent there he ‘heard of no less than thirty-one heads being brought home’.⁵² On his second

⁴⁶ Sillitoe, P. (1978). ‘Big men and war in New Guinea.’ *Man*, 13(2): 252-271; Harrison, S. (1989). ‘The Symbolic Construction of Aggression and War in a Sepik River Society.’ *Man*, 24(4): 583-599; Bennett, *Wealth of the Solomons*; Harrison, S. (2002). ‘The Politics of Resemblance: Ethnicity, Trademarks, Head-Hunting.’ *Journal of the Royal Anthropological Institute*, 8(2): 211-232.

⁴⁷ Knaft, ‘Melanesian Warfare’, 257; see also Harrison, ‘The Symbolic Construction of Aggression and War in a Sepik River Society’.

⁴⁸ White, G.M. (1980). ‘Social Images and Social Change in a Melanesian Society.’ *American Ethnologist*, 7(2): 352-370; Sillitoe, ‘Big Men and War in New Guinea’.

⁴⁹ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 99.

⁵⁰ Woodford, ‘Exploration of the Solomon Islands’, 360.

⁵¹ Woodford, ‘Exploration of the Solomon Islands’.

⁵² Woodford, ‘Exploration of the Solomon Islands’, 361.

expedition in 1887 again he stayed at Rubiana for a fortnight. The Islanders he noted, continued with their head-hunting expeditions, 'and had lately brought six heads from Bugotu on Ysabel'.⁵³ Woodford subsequently moved to Aola on Guadalcanal on 30 March 1887. At the time of his arrival he reported that men from the coast 'had just returned from a successful raid upon a mountain town (the term Woodford used for village), and had killed fifteen people', while just previously they and Islanders from Ruavatu had killed twenty-nine people.⁵⁴ Woodford wrote that these retaliatory attacks between bushmen and coastal dwellers made it 'dangerous to penetrate any distance into the interior'.⁵⁵

These experiences shaped Woodford's thinking about how the rule of law should be applied in the islands. During his first and second expeditions he reported regularly to Thurston in Fiji. He discussed what he had heard from Islanders and Europeans, and what he had observed and experienced. It was his opinion that the only way to solve the problem of head-hunting was to destroy the 'large tomakos or head-hunting canoes, which are used for no other purpose, and the houses in which they are kept'.⁵⁶ He also suggested that rather than having just occasional visits by Royal Navy men-of-war there should be a permanent police force of fifteen to twenty well-disciplined men who should be constantly on the spot, which would enable them to quickly 'become acquainted with the native customs and character' as well as be in a position to sufficiently 'maintain order in all parts of the group'.⁵⁷

⁵³ Woodford, 'Exploration of the Solomon Islands'.

⁵⁴ Woodford, 'Exploration of the Solomon Islands', 362.

⁵⁵ Woodford, 'Exploration of the Solomon Islands'.

⁵⁶ Woodford to Thurston, November 1886: Woodford's diary, 4-10 November 1886: PMB 1290, Reel 5, 1/4; see also PMB 1381, Reel 3, 022b.

⁵⁷ Woodford to Thurston, November 1886.

The proposed police force did not materialise because, as I discuss in Section 3.5, the Western Pacific High Commission in Fiji was not in a position to spend money on such a project. When Woodford was appointed Resident Commissioner, he was able to exploit this central role in the colonial administration in Solomon Islands to translate his experiences into practice in the interests of the colonial government and in the development of early colonial land law; he managed this despite being in a relatively weak position relative to other actors within the Western Pacific High Commission.

The substantial literature covering labour trafficking in the Pacific highlights the role of violence between Islanders and traders or settlers in the form of reprisals or counter reprisals. Much of this literature focuses on the movement of people through labour trafficking to work on plantations in Australia and Fiji.⁵⁸ A number of researchers, including Peter Corris and Tracy Banivanua-Mar, directly address the issue of the violence associated with the labour trade in the Pacific.⁵⁹ Such violence was most commonly due to Indigenous people avenging the death of their men in colonial Queensland or Fiji.⁶⁰ The labour trade and exchange of goods ‘for exportable produce, local food, labour and the use or acquiring of the land’⁶¹ cost

⁵⁸ Allan, C.H. (1957). *Customary Land Tenure in the British Solomon Islands Protectorate: Report of the Special Lands Commission*. Honiara, Western Pacific High Commission; Stewart, P.J. (1961). ‘New Zealand and the Pacific Labor Traffic, 1870-1874.’ *Pacific Historical Review*, 30(1): 47-59; Corris, P. (1973). *Passage, Port and Plantation: A history of Solomon Islands Labour Migration, 1870-1914*. Melbourne, Melbourne University Press; Moore, C. (1981). *Kanaka Maratta: A History of Melanesian Mackay*. James Cook University, PhD Thesis; Munro, D. (1995). ‘The Labor Trade in Melanesians to Queensland: An Historiographic Essay.’ *Journal of Social History*, 28(3): 609-627.

⁵⁹ Corris, P. (1968). ‘Blackbirding’ in New Guinea Waters, 1883-84: An Episode in the Queensland Labour Trade.’ *The Journal of Pacific History*, 3: 85-105; Banivanua-Mar, T. (2007). *Violence and Colonial Dialogue: The Australian-Pacific Indentured Labor Trade*. Honolulu, University of Hawaii Press.

⁶⁰ Boutilier, J.A. (1969). *The Western Pacific High Commission, 1877-1888: Its Creation and Problems of Administration*. University of London, PhD Thesis, 16.

⁶¹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 31.

the lives of both traders and Indigenous people. According to Bennett, '[b]etween 1860 and 1896 the total number of whites involved in trading who were killed was about eighty'.⁶² This demonstrated that Islanders were not always the passive objects of colonial encounters; instead they often actively expressed, through various avenues, their dissatisfaction with the outcomes of the labour trade.

The Royal Navy used the law as a tool to manage the labour trade and arrest labour recruiters who committed acts of violence against Islanders to be tried in New South Wales courts. Under the Australian Court Act 1828, the courts of New South Wales had the jurisdiction to deal with civil and criminal matters in the Pacific that concerned British subjects. The Queensland Polynesian Labourers Act of 1868 (Vict. No. 47) was the legal basis to regulate the labour trade in an attempt to address the uncontrolled violence between Islanders and traders or settlers. However, the legislation was ineffective in design because there was no provision requiring the appointment of an official to oversee recruitment.⁶³ The application of the law in the Australian courts to prosecute perpetrators of violence in association with the labour trade proved largely inadequate.⁶⁴

A substantial literature describes the functioning of colonial law applied to territories described as uncivilised and savage.⁶⁵ One example was the incident in 1869 on board the

⁶² Bennett, *Wealth of the Solomons*, 65.

⁶³ Boutilier, *The Western Pacific High Commission, 1877-1888*, 18.

⁶⁴ Mortensen, R. (2000). 'Slaving in Australian Courts: Blackbirding Cases, 1869-1871.' *Journal of South Pacific Law*, 4: 1-13.

⁶⁵ Scarr, *Fragments of Empire*; Bach, J. (1968). 'The Royal Navy in the Pacific Islands.' *The Journal of Pacific History*, 3(1): 3-20; Bach, J. (1985). *The Australia Station: A History of the Royal Navy in the South West Pacific, 1821-1913*; Bennett, *Wealth of the Solomons*; Samson, J. (1998). *Imperial Benevolence: Making British Authority in the Pacific Islands*. Honolulu, University of Hawaii Press; Mortensen, 'Slaving in

Young Australian schooner in which several Islanders were shot and thrown overboard. However, the offenders could not be arrested in order to be prosecuted because the New South Wales Attorney General advised there was no legal basis to properly issue bench warrants to arrest them outside of British territory.⁶⁶ Another example was the schooner *Daphne*, which was licensed in Queensland to carry fifty Islanders. The British Consul in Fiji and the Captain of *H.M.S. Rosario*, Commander Palmer, examined the vessel and reported that it was similar to an African slaver, carrying twice the permitted number of recruits, with sub-standard accommodation. Despite these irregularities, the British Consul could do no more under the Queensland Polynesian Labourers Act of 1868 than report the vessel to the colonial authorities to decide on an appropriate penalty. As a means to get around this legal dilemma, Commander Palmer detained the vessel under the Slaving and Foreign Jurisdiction Acts, which could be used against British subjects committing crimes outside British territory, within the jurisdiction of British and colonial courts. The case regarding the *Daphne* was unsuccessful because it was argued that the natives involved were not slaves.⁶⁷ The *Daphne* case demonstrated that this was a deliberate application of the law, a feature by design.

The violence associated with the labour trade in Queensland and Fiji persisted, and subsequently resulted in the murder of Bishop John Coleridge Patteson of the Church of Melanesia in 1871 on Nukapu. Much of the literature on the death of Patteson revolves

Australian Courts'; Hunt, D. (2007). 'Hunting the Blackbird: Ross Lewin and the Royal Navy.' *The Journal of Pacific History*, 42(1): 37-53.

⁶⁶ Scarr, *Fragments of Empire*, 6.

⁶⁷ Boutilier, *The Western Pacific High Commission, 1877-1888*.

around the explanation that it was a reprisal by Islanders to avenge the loss of some of their men abducted by recruiters.⁶⁸ But Thorgeir Kolshus and Even Hovdhaugen have recently challenged this explanation, arguing that one of the reasons for the murder of Patteson was because of his nagging. There was also the perception amongst Nukapu men that his interaction with their women had threatened the social and cosmological order by encouraging ‘egalitarian relations across hierarchical divides’ and ‘bringing two rigidly separated ritual domains into dangerous proximity’.⁶⁹ This alternative explanation of Patteson’s murder suggests that the way missionaries interacted with Islanders could also be a source of violence.

Following the murder of Patteson there was public reaction demanding stricter measures to regulate the labour trade which resulted in the Colonial Office enacting the Pacific Islander Protection Act 1872.⁷⁰ This Act authorised courts in the Australian colonies and New Zealand to prosecute British subjects who committed an offence outside British territory. However, its application was limited only to British subjects and ships because the legislation lacked the support of international treaties, thus it was possible to evade the law by flying a foreign flag.⁷¹ In other words, the law enabled *the law* to be avoided. James Arthur Boutilier pointed out that ‘the law could not be made to work on the spot for lack of effective government or

⁶⁸ Morrell, W.P. (1960). *Britain in the Pacific Islands*. Oxford, Clarendon Press; Boutilier, The Western Pacific High Commission, 1877-1888.

⁶⁹ Kolshus, T. and Hovdhaugen, E. (2010). ‘Reassessing the Death of Bishop John Coleridge Patteson.’ *The Journal of Pacific History*, 45(3): 331-355, 355.

⁷⁰ Monson, Hu Nao Save Tok?, 400.

⁷¹ Boutilier, The Western Pacific High Commission, 1877-1888, 30.

machinery in the islands'.⁷² Such a view suggests that in the absence of a centralised authority the application of the law to protect people and property would be a contested process.

As noted by Banivanua-Mar, the:

resistance, retaliation or negotiations of islanders were rarely recognized as political or rational interactions with colonial projects, but were rather seen as mindless, indiscriminate and unpredictable explosions of violence to which cannibals were prone.⁷³

Such representation of Islanders was not surprising because the race discourse during this era categorised Islanders as at the bottom of the race hierarchy scale.⁷⁴ During his third expedition visit to Solomon Islands in 1888, Woodford stayed at Ngella with the trader Lars Nielsen from Norway.⁷⁵ Woodford continued to hear about violent incidents in Solomon Islands, leading him to characterise the behaviour of Islanders as 'cowardice, both in its sense of timidity and in the desire to take advantage of the defenceless stranger or enemy'.⁷⁶

3.3.3 The Implications of Depopulation

Woodford's period working as a naturalist on scientific expeditions in Solomon Islands shaped his views about the question of depopulation in the Solomon Islands. These views subsequently shaped the direction of land law and plantation development when Woodford

⁷² Boutilier, *The Western Pacific High Commission, 1877-1888*.

⁷³ Banivanua-Mar, 'Frontier Space and the Reification of the Rule of Law', 26.

⁷⁴ Lawrence, *The Naturalist and His 'Beautiful Islands'*.

⁷⁵ Lars Nielson was the 'first Norwegian known to have settled in the Solomons', Hviding, E. (2015). 'Norwegian Shipping and Landfall in the South Pacific in the Age of Sail.' In Kjerland, K.A. and Bertelsen, B.E. (eds), *Navigating Colonial Orders: Norwegian Entrepreneurship in Africa and Oceania*. Oxford and New York, Berghahn Books, 173-186, 183.

⁷⁶ Woodford, *A Naturalist among The Headhunters*, 42.

was appointed Resident Commissioner. Woodford understood the cultures he observed in the Solomon Islands as belonging to the 'Stone Age', lying at the lower limit of Darwin's scale of comparison between the highest ape and the lowest savage.⁷⁷ His views were influenced by his reading of Darwin's *Descent of Man*, which he 'reread' in 1884.⁷⁸ His retracing of the places 'visited by the Spanish expedition, under Mendana [sic], that discovered the Solomon Islands in the year 1568'⁷⁹ led him to conclude that the sixteenth-century population had been significantly greater, proof that there had been depopulation since. Woodford was able to convince the colonial government of the reality of depopulation in Solomon Islands, which in turn contributed to the way in which he enacted the early colonial land law referred to as the waste land legislation.

Woodford visited Ysabel in November 1888 and noted that some of the places visited by the Spanish expedition in 1568 were now uninhabited. He pointed out that on St. George Island, Ysabel, the Spanish explorers met a powerful chief named 'Beneboneja or Ponemonefa' and described his town (i.e village) as comprising over 300 houses. However, Woodford found no permanent settlement on St. George Island and reported that the former residents had been decimated by head-hunters.⁸⁰ The Spanish explorers also landed at Puerto de la Cruz⁸¹ on

⁷⁷ Woodford Diary, 25 June 1886, Woodford papers cited in Heath, Charles Morris Woodford of the Solomon Islands, 29; Woodford Diary available at PMB 1290 Reel 1 Bundle 6, 1/2, *Diary 16 April - 5 July 1886*.

⁷⁸ Woodford Diary, 10 March 1884, Woodford papers cited in Heath, Charles Morris Woodford of the Solomon Islands: Woodford Diary available at PMB 1290 Reel 4 Bundle 25 1/1, *Journal 4 March - 22 June 1884*.

⁷⁹ Woodford, 'Further Explorations in the Solomon Islands', 397.

⁸⁰ Woodford, 'Further Explorations in the Solomon Islands', 407.

⁸¹ Puerto de la Cruz is today referred to as Point Cruz, which is part of the Honiara landscape.

Guadalcanal and explored the interior where they discovered the ‘country thickly peopled and well cultivated’.⁸² In fact, the Spanish did not go far inland and their contacts with the Islanders were limited; their claims for the size of the population may have been exaggerated to promote the notion of large populations that could be enslaved, and to justify to Madrid the cost of further expeditions.

Woodford pointed out that now ‘the neighbourhood near the anchorage [was] but thinly peopled’ and there were no Islanders ‘living now on the coast close to the Puerto de la Cruz’.⁸³ His explanation for this apparent trend in depopulation was due to a combination of ‘black box’ elements. In ANT theory, a black box can refer to concepts, humans, institutions or objects. In Woodford’s case I argue that when he came into contact with these black boxes, such as the introduction of firearms by Europeans, Islander warfare or the contribution to depopulation of the widespread practices of foeticide and infanticide,⁸⁴ he processed them through a conceptual frame formed by his understanding of racial and evolutionary theories of the time. This then influenced him to believe that Solomon Islanders would eventually become extinct.⁸⁵

The historical transition from a religious determinism that perceived natural history as the work of God to a scientific rationalism based on the principles of evolution and adaptation shaped the discourse on race extinction.⁸⁶ Darwin theorised evolution as descent with

⁸² Woodford, ‘Further Explorations in the Solomon Islands’, 409.

⁸³ Woodford, ‘Further Explorations in the Solomon Islands’.

⁸⁴ Heath, Charles Morris Woodford of the Solomon Islands, 30.

⁸⁵ Woodford, *A Naturalist among The Headhunters*.

⁸⁶ Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 67.

modification, asserting that populations and species change over time through the process of natural selection.⁸⁷ Supporters of the theory of monogenesis and those of polygenesis differed in their views of the fundamental nature of difference amongst human races, but both schools of thought classified ‘the varieties of man by racial type’ and shared the assumption ‘that a hierarchy of races existed with Europeans at the top of the scale’.⁸⁸

The perception that races towards the bottom of the scale were doomed to extinction was influenced by frontier colonial encounter experiences.⁸⁹ As discussed in Chapter 2, race extinction discourse was linked to debates about depopulation.⁹⁰ It was based on the assumption that a subject race perceived as savage and primitive ‘could not possibly survive in competition with the superior and progressive European races’.⁹¹ Such theories promoted

⁸⁷ Khan, S. (2017). ‘Darwin, Evolution and Natural Selection: Charles Darwin’s Voyage on the HMS Beagle and His Ideas about Evolution and Natural Selection.’ California, Khan Academy. <<https://www.khanacademy.org/science/biology/her/evolution-and-natural-selection/a/darwin-evolution-natural-selection>> (Accessed 30/7/2017); for discussion on Darwin’s theory of descent with modification see: Penny, D. (2011). ‘Darwin’s Theory of Descent with Modification, versus the Biblical Tree of Life.’ *PLoS Biology*, 9(7): 1-4.

⁸⁸ Lorimer, D. (1988). ‘Theoretical Racism in Late-Victorian Anthropology, 1870-1900.’ *Victorian Studies*, 31(3): 405-430, 405; see also Lawrence, *The Naturalist and His ‘Beautiful Islands’*, 73.

⁸⁹ Lorimer, ‘Theoretical Racism in Late-Victorian Anthropology, 1870-1900’; Douglas, B. and Ballard, C. (2012). ‘Race, Place and Civilisation: Colonial Encounters and Governance in Greater Oceania.’ *The Journal of Pacific History*, 47(3): 245-262.

⁹⁰ For literature on depopulation in the Pacific see: Rivers, W.H.R., Ed. (1922). *Essays on the Depopulation of Melanesia*. Cambridge, University Press; Buxton, P.A. (1926). ‘The Depopulation of the New Hebrides and Other Parts of Melanesia.’ *Transactions of the Royal Society of Tropical Medicine and Hygiene*, 19(8): 420-458; Roberts, S.H. (1927). *Population Problems of the Pacific*. London, G. Routledge & Sons; Pitt-Rivers, G.H.L.F. (1927). *The Clash of Culture and the Contact of Races: An anthropological and Psychological Study of the Laws of Racial Adaptability, with Special Reference to the Depopulation of the Pacific and the Government of Subject Races*. London, George Routledge; Williams, F.E. (1933). *Depopulation of the Suau District*. WA Bock, Acting Government. Printer; Lukere, V. (1997). *Mothers of the Taukei: Fijian Women and ‘the Decrease of the Race’*. Australian National University, PhD; Jolly, M. (2001). ‘Infertile States: Person and Collectivity, Region and Nation in the Rhetoric of Pacific Population.’ In Jolly, M. and Ram, K. (eds), *Borders of being: Citizenship, Fertility, and Sexuality in Asia and the Pacific*. USA, The University of Michigan Press, 262-306.

⁹¹ McGregor, R. (1993). ‘The Doomed Race: A Scientific Axiom of the Late Nineteenth Century.’ *Australian Journal of Politics & History*, 39(1): 14-22, 16.

and sustained a Eurocentric mindset of racial hierarchy whereby colonised races perish due to a primitive mental capacity while the colonizers survive.⁹²

Woodford's perception of an apparent trend towards depopulation in Solomon Islands drew on a global flow of ideas on race extinction shaped by scientific 'views of nature and race that sustained much racial and cultural prejudice'.⁹³ Race extinction, as Patrick Brantlinger notes, was understood as an inevitable product of the process of civilisation.⁹⁴ The notion of Indigenous people as doomed races appeared in Woodford's ethnographic work, as well as his government documents and correspondence and powerfully influenced the colonial government's approaches to land development in Solomon Islands. Race extinction theories ultimately provided the rationale for land law to be designed 'as the instrument which the colonial state in most underdeveloped economies consciously utilized to penetrate traditional modes of production and to link them under conditions of subservience to local and metropolitan capital interest'.⁹⁵

3.4 Woodford and the Royal Navy

Woodford arrived in the western Pacific at a moment when much of the region was still 'a frontier 'contact zone' where relations of power were negotiated in ways that retained an inherent potential for violence ... such violence was variously positioned as both a cause and

⁹² Blyton, G. (2009). 'Seeds of Myth: Exotic Disease Theory and Deconstructing the Australian Narrative of Indigenous Depopulation.' *The Australian Journal of Indigenous Education*, 38(Supplementary): 17-24.

⁹³ Lawrence, *The Naturalist and His 'Beautiful Islands'*, 75.

⁹⁴ Brantlinger, *Dark Vanishings*.

⁹⁵ Ng'ong'ola, C. (1990). 'The State, Settlers, and Indigenes in the Evolution of Land Law and Policy in Colonial Malawi.' *International Journal of African Historical Studies*, 23(1): 27-58, 27.

a symptom of frontier spaces'.⁹⁶ These frontier spaces were sites of legal ambiguity which 'exacerbated a sense of disorder that compelled ever more efficient expansion of colonial influence under a broad justifying narrative of the civilizing mission bringing order, stability and security to the disorder and primitiveness of the frontiers and beyond'.⁹⁷ Woodford's frontier experiences led him to call on the Royal Geographic Society, declaring that 'in the interest of humanity itself, some effective measures should be taken to put a stop to such wholesale slaughter'.⁹⁸ He made this call for effective law and order measures during a period when British policy to address the challenge of frontier violence was based on a 'minimal interventionist' approach.⁹⁹

In fact, what has been termed the minimal interventionist approach was not a formal government directive at all. According to William Morrell, 'British statesmen and officials devised remedies for particular evils and policies in particular situations when decisions had to be taken; but they certainly did not think continuously about Pacific problems'.¹⁰⁰ James Boutilier has suggested that British action was premised on a posture of minimum intervention because the Colonial Office, at that time, was 'influenced by the Manchester economists like Ricardo and Mill, who maintained that colonies were an economic burden, and prejudiced by relations with unstable non-white communities ... to avoid annexing a

⁹⁶ Banivanua-Mar, 'Frontier Space and the Reification of the Rule of Law', 26.

⁹⁷ Banivanua-Mar, 'Frontier Space and the Reification of the Rule of Law', 39.

⁹⁸ Woodford, 'Exploration of the Solomon Islands', 375.

⁹⁹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*; Ward, J.M. (1976). *British Policy in the South Pacific (1786-1893): A Study of British Policy in the South Pacific Islands Prior to the Establishment of Governments by the Great Powers*. Westport, Conn, Greenwood Press.

¹⁰⁰ Morrell, *Britain in the Pacific Islands*, vii.

territory' or protecting far-off colonies.¹⁰¹ Boutilier argues that 'prior to the annexation of Fiji in 1874 Britain was reluctant to assume responsibility for governing her subjects in the Pacific or to extend more than token assurance of protection to friendly chiefs who requested'.¹⁰² British colonial policy thus developed largely in order to protect its own subjects in the western Pacific; protection of Islanders was incidental or secondary.

According to Doug Hunt, the Royal Navy's 'warships were the most tangible element of British power and prestige in the Pacific';¹⁰³ the Navy's role in the Pacific was directed largely towards policing the labour trade and curbing attacks against British subjects.¹⁰⁴ The Royal Navy had two stations, one located in Sydney and the other in Valparaiso on the west coast of Chile, South America; the squadron based in Sydney had the responsibility of policing the labour trade in Melanesia.¹⁰⁵ Commodore George Tryon wrote that the purpose of the Royal Navy as an agent of the world's most powerful colonial authority '...is to supervise vessels and trade where civilization and barbarism are in contact and to promote good understanding and good order'.¹⁰⁶

¹⁰¹ Boutilier, *The Western Pacific High Commission*, 1877-1888, 9.

¹⁰² Boutilier, *The Western Pacific High Commission*, 1877-1888, 10.

¹⁰³ Hunt, D. (2007). 'Hunting the Blackbirder: Ross Lewin and the Royal Navy.' *The Journal of Pacific History*, 42(1): 37-53, 39.

¹⁰⁴ Scarr, *Fragments of Empire*; Bach, 'The Royal Navy in the Pacific Islands'; Bach, *The Australia Station*; Bennett, *Wealth of the Solomons*; Samson, *Imperial Benevolence*; Mortensen, 'Slaving in Australian Courts'; Hunt, 'Hunting the Blackbirder', 37-53.

¹⁰⁵ Bach, 'The Royal Navy in the Pacific Islands', 4.

¹⁰⁶ PMB 1290 Reel 5: Rear Admiral Tryon to Captain Brooke, H.M.S. "Opal". Australian Station, New Guinea and Solomon Islands 1886, 3.

The Royal Navy's strategic response to violence in the southwest Pacific has been described as 'commodore justice', reflecting a formal policy that any outrage against a British subject was deemed an act of war to be sanctioned by executive authority and not by the law.¹⁰⁷ This is evident from the orders given to the captains of naval ships of the Australian Station investigating outrages committed in various parts of Solomon Islands. In 1880, Commodore J.C. Wilson gave sailing orders to Captain W. H. Maxwell of *H.M.S. Emerald* to investigate the murder of Lieutenant Bower and five men of H.M. Schooner *Sandfly*. Wilson stressed that, if the culprits escaped, naval ships were to follow them wherever they go and inflict 'on them [the] severe punishment they so well deserve'.¹⁰⁸ Following his inquiry into the murder incident, Captain Maxwell took punitive action that resulted in villages 'destroyed entirely, plantations and fruit trees cut down and pulled up, and everything that was possible done to teach a lesson to these murderers'.¹⁰⁹ Punitive expeditions became a routine measure of colonial governance in Solomon Islands and the New Hebrides (now Vanuatu) until as late as the 1930s.¹¹⁰

¹⁰⁷ Boutilier, *The Western Pacific High Commission, 1877-1888*, 107.

¹⁰⁸ PMB 1214, Reel 1 Vol. 17: 'Commodore J.C Wilson to Captain W.H Maxwell: "Emerald" - Sailing Orders, 2 December 1880.' Solomon Islands (Punishment of Natives), Copy of Papers relating to punishment of Natives for outrages committed by them in the Solomon Islands and other Groups of the Western Pacific, 16 June 1881, 1.

¹⁰⁹ PMB 1214, Reel 1 Vol. 17, 3.

¹¹⁰ On punitive expeditions in Solomon Islands and New Hebrides see: O'Brien, A. (2017). 'Crime and Retribution in the Western Solomon Islands: Punitive Raids, Material Culture, and the Arthur Mahaffy Collection, 1898-1904.' *Journal of Colonialism and Colonial History*, 18(1). doi:10.1353/cch.2017.0000 (Accessed 5/8/2017); and Bedford, S. (2017). 'A Good Moral Effect? Local Opposition and Colonial Persistence in Malekula, New Hebrides, 1875-1918'. *Journal of Colonialism and Colonial History*, 18(1). doi:10.1353/cch.2017.0000 (Accessed 5/8/2017).

Woodford strongly condemned the Royal Navy's approach of punishing murderers with the 'farce of firing shells into the bush'.¹¹¹ He wrote, sincerely, that 'I know of no place where firm and paternal government would sooner produce beneficial results than in the Solomon Islands'.¹¹² Referring to reports of murders in Solomon Islands, Woodford asserted that such murders would continue 'so long as England ignores her obligation to extend by annexation that protection to her subjects in the Solomon that she was at length forced against her will to extend to British New Guinea'.¹¹³ Such sentiments demonstrated Woodford's strong belief in the need to establish a firm and permanent British presence in Solomon Islands.

John Bach's research on the role of the Royal Navy in the Pacific highlights the powerful, class-based role of a naval officer of the late nineteenth century. The officer class represented 'the European concept of justice, yet he was without legal authority to interfere; if he chose to ignore this disability he still faced the tasks of legislator, judge and occasionally executioner, often without anything more than his personal values and view of society to guide him'.¹¹⁴ For naval officers, handling disputes was a challenge because:

[a]t each island group the commander could expect to find a variety of problems presented to him for arbitration or adjudication, tasks that needed all his initiative and diplomacy to fulfil. At such times his orders were barely more than a general guide and lacking accessible superior authority he had no alternative but to assume the responsibility for making decisions which might well expose him to later attack and even censure.¹¹⁵

¹¹¹ Woodford, *A Naturalist among The Headhunters*, 21-23.

¹¹² Woodford, *A Naturalist among The Headhunters*.

¹¹³ Woodford, *A Naturalist among The Headhunters*.

¹¹⁴ Bach, 'The Royal Navy in the Pacific Islands', 5.

¹¹⁵ Bach, 'The Royal Navy in the Pacific Islands', 4.

Deryck Scarr has stressed that '[t]he instructions under which naval commanders acted in the islands were, in fact, a characteristic embodiment of the theory of indigenous sovereignty and responsibility'.¹¹⁶ They were intended both 'to assure inhabitants of the friendly disposition of Her Majesty's Government' and to punish any outrages that occurred in order to protect British subjects and Islanders from the recurrence of such outrages.¹¹⁷ Commodore George Tryon noted that 'while British subjects should be protected from the unprovoked attack of savages, the native should be protected from the lawless acts of whitemen'.¹¹⁸ This view attests to the predominant notion of the civilising mission, in both its civic and religious forms; but it also justified intervention strategies that required no further rationale to substantiate the use of military force, cultural destruction and dispossession.¹¹⁹

Together, Bach and Scarr make the case for a significant role for the Royal Navy in shaping law and order in colonial Australia and the Western Pacific, and violence played a central part in the enforcement of this order. A naval vessel, on receiving a report of a murder in Solomon Islands, committed either against British subjects or Islanders, would go to the scene of the attack to investigate. In most cases, Islanders were invited on board the vessel to give their account of the murder and the captain would negotiate for their assistance in capturing the culprits. The role of the Islanders was to identify the culprits. Failure to do so would result in other villagers being implicated as parties to the crime committed. Following

¹¹⁶ Scarr, *Fragments of Empire*, 10.

¹¹⁷ Scarr, *Fragments of Empire*.

¹¹⁸ PMB 1290 Reel 5.

¹¹⁹ Blyton, G. (2009). 'Seeds of Myth: Exotic Disease Theory and Deconstructing the Australian Narrative of Indigenous Depopulation.' *The Australian Journal of Indigenous Education*, 38 (Supplementary): 17-24, 21.

the inquiry the captain would assess the circumstances and then, where appropriate, formally declare war on those individuals or communities identified as the culprits. The naval forces at his disposal would respond by attacking the village(s), destroying them and ‘if possible seizing and securing the natives, and punishing any attempt at escape or resistance’.¹²⁰

The Royal Navy’s forceful approach to punishing atrocities committed against British subjects and Islanders provided the impetus for the transformation of colonial violence. Bruce Knaft describes the historical transition in Melanesia from ‘reciprocated raids to more unilateral and asymmetric punitive expeditions by whites, commonly entailing the burning of villages, the killing of enemy encountered, and shelling of coastal settlements from man-of-war ships’.¹²¹ But, as pointed out by Tracey Banivanua-Mar, the colonial sanctioned violence was little different to the ‘perceived notions of native violence’.¹²² Tribal law, like cannibalism was perceived as ‘indiscriminate, impulsive, and irrational violence’ and yet this was exactly the kind of violence that the commodore justice emulated.¹²³ As Chris Ballard points out, commodore justice – as a form of punitive expedition – was essentially a frontier activity.¹²⁴ The moral justification was ‘to eliminate savagery and lawlessness and yet ... the

¹²⁰ PMB 1214, Reel 1 Vol. 17: ‘Captain W.H. Maxwell to Commodore J.C. Wilson: Reporting Proceedings, 31 January 1881’, 3.

¹²¹ Knaft, ‘Melanesian Warfare’, 252.

¹²² Banivanua-Mar, *Violence and Colonial Dialogue*, 37.

¹²³ Banivanua-Mar, *Violence and Colonial Dialogue*, 38.

¹²⁴ Ballard, C. (2017). ‘Swift Injustice: The Expedition of Imperial Punishment.’ *Journal of Colonialism and Colonial History*, 18(1). [doi:10.1353/cch.2017.0020](https://doi.org/10.1353/cch.2017.0020) (Accessed 5/8/2017).

tactics and strategies required for imperial success came very quickly to emulate or mimic those of their irregular opponents'.¹²⁵

3.5 Islander Protection and the Western Pacific High Commission

During the 1870s, two important pieces of Imperial legislation were passed in the British Parliament to protect Pacific Islanders in the Western Pacific: the first, the Pacific Islanders Protection Act 1872 (35 & 36 Vic c. 19) and the second, the Pacific Islanders Protection Act 1875 (38 & 39 Vic, c. 51.), a supplement and amendments to the principal Act of 1872. The legislation provided for the prevention and punishment of criminal outrages inflicted upon natives, and empowered Her Majesty to have jurisdiction over British subjects not within the jurisdiction of any civilised power. The High Commissioner for the Western Pacific was to be located in Fiji under the Order in Council 1877, with subsequent amendment in 1879, with extraterritorial jurisdiction over British subjects in the islands. The role of the Western Pacific High Commission was to exercise consular authority, administer the Pacific labour trade, and maintain 'exclusive control over British subjects and regulate their relations with the native inhabitants of the South western Pacific'.¹²⁶ The effectiveness of the High Commission's presence in Solomon Islands was limited by geographical distance and resource constraints. Thus, the Royal Naval was relied upon to extend colonial authority and would continue to inflict punishment on Indigenous people by considering violence against British subjects as an act of war.¹²⁷

¹²⁵ Ballard, 'Swift Injustice'.

¹²⁶ Boutilier, *The Western Pacific High Commission, 1877-1888*, 41.

¹²⁷ Bennett, *Wealth of the Solomons*, 104; see also Monson, *Hu Nao Save Tok?* 121; and Boutilier, *The Western Pacific High Commission, 1877-1888*.

One of the principal challenges confronting the High Commissioner was dealing with land tenure. It was inevitable that traders, settlers and missionaries would seek to acquire freehold land for permanent settlement. How land transactions were understood by and negotiated between settlers, missionaries and Indigenous peoples, and what constituted a sale for each of these groups, were points of contention that could translate into violence. As noted by James Boutilier, land sale in the eyes of an Islander more closely resembled the European concept of renting.¹²⁸ In the eyes of Islanders, land could not be permanently alienated. A financial arrangement between a settler and a local community was simply an agreement to permit the purchaser usufruct right. The land remained the property of the Indigenous community.

Settlers coming from an Anglo-Australian legal heritage regarded a financial transaction as an agreement that created the permanent alienation of land, which then became the property of the buyer. Stuart Banner shows how encounter experiences in the form of land transactions contributed to the dispossession of traditional land owners in the Pacific and elsewhere. He argues that such transactions reflected conditions of law and power because Europeans acquiring land were doing so within a legal framework of their own construction. The more politically and economically powerful they became, the more they were able to acquire land at lower relative prices.¹²⁹

¹²⁸ Boutilier, The Western Pacific High Commission, 1877-1888, 96.

¹²⁹ Banner, S. (2005). *How the Indians Lost Their Land: Law and Power on the Frontier*. Harvard, Harvard University Press; see also Banner, S. (2007). *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska*. Harvard, Harvard University Press.

Royal Navy Commodores who took the role of Deputy Commissioners of the Western Pacific High Commission also played a mediating role in the processes of land claim settlement. E.R. Nixon, a naval officer and Deputy Commissioner witnessed a land transaction on 18 September 1876 between Captain Alexander Mackenzie Ferguson of *Mariner* and the people of Ugi in Makira. Ferguson bought vast tracts of customary land for £30. Twenty-three people signed the land deed certifying that they were the rightful owners alive and that Alexander Mackenzie Ferguson could ‘occupy the said land without molestation from [the people] in any shape or form’.¹³⁰ The land deed stated that the people understood that by selling their land they forfeited their claims to the trees growing on it. The fact that the Deputy Commissioner witnessed the land transaction sanctioned the sale by the WHPC. The terms of the land deed provided the basis for transforming customary land into property which could be invested with markers of possession such as fences and trespass signs. When, as Resident Commissioner, Woodford came across these land deeds, he understood them through his conceptual frame of the frontier, which informed his thinking on how to address land speculation in Solomon Islands.

One of the local traders engaged in land dealings prior to the formation of the British Solomon Islands Protectorate was Alexander Ferguson ‘who like many other traders married a local woman’.¹³¹ Ferguson was one of the leading traders in Solomon Islands in the 1870s, using local traders and European agents at Ugi.¹³² In 1877, he had entered into a partnership

¹³⁰ Papers relating to claims to land in the Solomon Islands, Commodore Wilson to the High Commissioner, 28 November 1881, 2. PMB 1214, Reel 1 Vol. No. 27.

¹³¹ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 53.

¹³² Bennett, *Wealth of the Solomons*, 49.

arrangement with Cowlshaw Brothers, a merchant shipping firm from Sydney. He subsequently set up European traders at various locations in Solomon Islands. Part of this trading network involved the acquisition of large amounts of land to establish permanent trading stations. According to a land deed dated 21 July 1874, Ferguson acquired an island named Newchalawatah, situated on the west coast of New Georgia Island between Bealeah and Irimo. The ‘Kings of Rubiana’, as they were identified on the land deed, were paid in trade goods. Then, on 2 December 1876, Ferguson acquired an islet called Marau Peenah, situated off the settlement of Hohorah, from chief Wassarry for £10. Finally, on 14 March 1879, he acquired a parcel of land situated in Marau Sound, south-east end of Guadalcanal Island, from a local chief Coumarrah, Idahty and all landowners for £20.¹³³ These land transactions demonstrate the beginnings of the formal land alienation process in Solomon Islands, involving Europeans and Islander men who were described variously as chiefs, kings or landowners.¹³⁴ The use of such labels shaped how notions of ownership and property were understood and interpreted by various actors and had an impact on how land was subsequently settled or contested.

The ways in which the land deeds were drafted further encouraged land alienation, which provided the impetus for the transformation of customary land to property. The 1874 land deed signed between Ferguson and the Roviana landowners stipulated that the landowners certified that they ‘dispose of all [their] rights and title to the [land]’ to Ferguson ‘in consideration of trades’. An 1876 land deed framed along similar lines stated ‘I, Wassarry,

¹³³ Papers relating to claims to land in the Solomon Islands, Commodore Wilson to the High Commissioner, 28 November 1881: PMB 1214, Reel 1 Vol. No. 27, 2-4.

¹³⁴ Monson, Hu Nao Save Tok?

chief of the village called Hohorah ...certify that the said A.M. Ferguson shall enjoy possession [of the land], and that I and my heirs for all time forthcoming consider the islet Marau Peenah as the property of the said A.M. Ferguson, with all the trees, houses, and effects thereon, for myself and heirs'. Moreover, the 1879 land deed stated that the purchase price consideration 'for the absolute purchase, in fee simple, free from encumbrances, of the lands and hereditaments ... Together with all woods, waters, ores, or minerals thereto belong' to Ferguson.¹³⁵ The terms of the land deeds appear to have served only the interests of the traders, although the landowners seemingly agreed to the terms and wanted the money. The land deeds also revealed the emergence of new property concepts which redefined the relationships amongst actors involved in the land deals. These formal land transactions were considered to be the basis for the transformation of customary land to property within the colonial frontier.

The Cowlshaw brothers wrote to Commodore Wilson on 12 July 1881, asking him to protect their property rights from others who were claiming titles to the same lands through misrepresentation. They were concerned about the lands at Ugi because John Stephens, a trader who was one of the witnesses to the signing of the land deed by Ferguson and the Ugi people, was intending to obtain a new deed for the same lands. Ferguson had since been murdered in 1880 when trading at Numa, on the east coast of Bougainville. Commodore Wilson ordered Commander E.S. Dawson of *H.M.S. Miranda* to enquire into the proprietorship of lands at Ugi, Guadalcanal and New Georgia. The Cowlshaw brothers claimed that Ferguson had acquired the lands on their behalf. However, John Stephens

¹³⁵ Papers relating to claims to land in the Solomon Islands, Commodore Wilson to the High Commissioner, 28 November 1881: PMB 1214, Reel 1 Vol. No. 27, 3.

claimed that Ferguson had transferred certain lands at Ugi to him. Commander Dawson wrote that both parties lacked credible evidence to substantiate their claims. On that basis, he ruled that all the land bought by Ferguson should revert to his estate for administration.¹³⁶ In this and in other ways, new ideas of succession and rules of inheritance that emanated from a western legal tradition began to shape property relations in Solomon Islands.

On paper, the land deeds provided the basis for traders to assert ownership of land; but while traders could attempt to restrict access or exclude original landowners from the land, this could easily lead to dispute and conflict. In reporting on the proprietorship of certain lands at Ugi and elsewhere, Commander Dawson noted that the purchases of land had become a daily occurrence. He was of the view that, in order to prevent land disputes occurring,

before any purchase is considered complete, it should be imperative the same should be registered, after inquiry, by an official of the High Commission Court; but this act of registration should in no way be considered a guarantee of peaceful possession, the purchasers themselves accepting all the risks attendant on such investments in uncivilised countries.¹³⁷

Given the highly contested nature of such land deals, in 1881 the High Commissioner instructed Deputy Commissioner Hugh Hastings Romilly to examine them more closely. Romilly was ordered to ‘inform British subjects who have purchased land that Her Majesty would not recognise such transactions unless the papers are forwarded to the High Commissioner or Deputy Commissioner for registry’.¹³⁸ The High Commissioner instructed

¹³⁶ Papers relating to claims to land in the Solomon Islands, Commodore Wilson to the High Commissioner, 28 November 1881: PMB 1214, Reel 1 Vol. No. 27, 1-2.

¹³⁷ “Miranda” in the Solomon Islands, Commodore Wilson to the High Commissioner, 28 November 1881, 7: PMB 1214, Reel 1 Vol 28.

¹³⁸ Gordon to Romilly, 31 March 1881: Co 225/1 cited in Boutilier, J.A. (1969). *The Western Pacific High Commission, 1877-1888*, 97.

Commodores of the Royal Navy to remind British subjects ‘of the extreme insecurity of any title they may acquire through any alleged purchase from native chiefs or people in the absence of accurate and reliable information as to the tenure of land among them...’.¹³⁹ In his instructions to Commodore James Erskine in 1882, High Commissioner Arthur Gordon stressed that all land claims ‘will be registered as a matter of course and the papers carefully preserved with a view to future investigation, but it is not to be assumed that such registration conveys any guarantee of title’.¹⁴⁰

Gordon explained that the rationale for his instructions to the naval Commodores was to inform British subjects that documented and registered land purchases would give the High Commissioner ‘some idea of the extent to which land purchases were being made and act as a check on future deceit. Moreover, the determination to regard unregistered claims as invalid would render impossible the rise of troublesome claims’.¹⁴¹ However, the Colonial Office ruled against Gordon’s instructions and the Fiji Royal Gazette of 1884 notified that:

as the registration of ... land transactions would be liable to be construed as a confirmation of them by the Imperial Government, carrying with it some obligation to uphold such transactions and possibly to give specific protection to the purchasers, no such registration shall be permitted...Her Majesty’s Government [would] accept no responsibility in regard to transactions relating to land in the Pacific Ocean not being in British territory.¹⁴²

¹³⁹ Gordon to Romilly, 31 March 1881: Co 225/1 cited in Boutilier, *The Western Pacific High Commission, 1877-1888*, 97.

¹⁴⁰ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 34/35.

¹⁴¹ Boutilier, *The Western Pacific High Commission, 1877-1888*, 97.

¹⁴² Boutilier, *The Western Pacific High Commission, 1877-1888*, 97; Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*.

John Thurston, Gordon's successor as High Commissioner, issued a notice in 1884 (later cancelled by a second notice in July 1886) instructing 'that British subjects desiring to Register purchases of Land made by them in the islands of the Western Pacific ... can do so by forwarding the original deeds ... to the Secretary to the High Commission, Suva, Fiji'.¹⁴³ Another notice duplicating the terms of the second notice was then issued in November 1886, and reprinted in 1898, signed by Wilfred Collett as Secretary to the High Commission. This notice permitted parties to register their land claims though such registration did not constitute a record of good title that Her Majesty's Government would feel obliged to protect. Under these notices, various land transaction claims were to be registered in the office of the High Commissioner in Fiji but without the force of a legal Regulation. Land claims were registered in accordance with the terms of the notice of November 1886, while other claims were later ratified under the first land law for Solomon Islands enacted in 1896.¹⁴⁴

3.6 Protectorate State

The increase in British intervention in the Solomon Islands from extra-territorial jurisdiction to direct administration was shaped by events in the 1890s. Judith Bennett suggests three factors drove this Imperial policy change. First, Britain's dominance in trade and industry declined due to a contracting market when other powerful political and economic nations like Germany, France and USA began producing similar industrial products. Second was the growing desire for colonial powers to safeguard their own economic and political interests around the world: Germany had annexed New Guinea and Samoa; France was exerting

¹⁴³ 'Notice, High Commission, Western Pacific, 27 July 1886: UASC, WPHC 8/VI/9.

¹⁴⁴ The Solomon (Land) Regulation, No. 4 of 1896.

authority over the Society Islands (French Polynesia), New Caledonia and would later declare a condominium with Britain over the New Hebrides (Vanuatu). Third was the decision by the government of Sir Samuel Griffiths in Queensland to reverse its decision to abandon the labour trade with the passing of the Pacific Island Labourers (Extension) Act 1892 (Qld)(55 Vic. No. 38), which provided a plausible excuse to import more Islanders, thereby protecting a labour reserve for Queensland and Fiji recruiters.¹⁴⁵ These were amongst the key factors providing the strategic and economic impetus for the British annexation of Solomon Islands as a protectorate in 1893.

The declaration of the British Solomon Islands Protectorate by Britain created a centralised authority vested in the Western Pacific High Commissioner, which was represented in Solomon Islands by a Resident Commissioner based at the colonial administration headquarters at Tulagi in the Ngella group of islands.¹⁴⁶ Woodford played a key role in negotiating with Islanders of Haleta, who represented the villages of Ngella, to purchase Tulagi for £42 on 29 September 1896.¹⁴⁷ In this instance, Woodford himself was engaged directly in a land transaction that contributed to the impetus for the transformation of customary property to state land.

¹⁴⁵ Bennett, *Wealth of the Solomons*, 105; see also Scarr, *Fragments of Empire*; Hempenstall, P. (1994). 'Imperial Manoeuvres.' In Howe, K.R., Kiste, R.C and Lal, B.V. (eds), *Tides of History: The Pacific Islands in the Twentieth Century*. Honolulu, University of Hawaii Press; and Tagini, P.I. (2007). *The Search for King Solomon's Gold: An Examination of the Policy and Regulatory Framework for Mining in Solomon Islands*. Monash University PhD Thesis; Monson, Hu Nao Save Tok?

¹⁴⁶ Bennett, *Wealth of the Solomons*.

¹⁴⁷ Purchase of the Island of Tulagi enclosed in: UASC, WPHC MP No. 474, 1896.

With the establishment by a Pacific Order in Council 1893 of the administration at Tulagi, Solomon Islanders now became ruled by a colonial government that had the power to enact and enforce laws,¹⁴⁸ and to regulate and control the activities of British subjects and their dealings with local inhabitants,¹⁴⁹ particularly in regard to ‘... labour traders and to a lesser extent commercial trading’.¹⁵⁰ Amongst the central roles of the BSIP government were the control and regulation of the labour trade, and the protection of the Solomon Islands from other colonial powers. The Pacific Order in Council 1893 stipulated that the Order was to be exercised over the ‘Solomon Islands, so far as they are not within the jurisdiction of the German Empire’.¹⁵¹ This provided a legitimate basis for Britain ‘...to justify keeping out other colonial powers, particularly France and Germany’¹⁵² from BSIP. The central authority eventually developed into a state that Solomon Islanders were expected to legitimize by conforming to its laws and participating in its programs.

The protectorate rule was proclaimed by imperial Britain in the wake of traders, settlers and missionaries asserting their claims to lands which they felt that they had legitimately acquired from Solomon Islanders. However, some Solomon Islanders refused to concede that they had sold the land, while others claimed that those who sold the land were not the owners. A case in point was the big man Maghratulo of Vella Lavella. He acquired political support from leaders in the Mbilua district due to feast giving, organising head hunting raids, and

¹⁴⁸ Section 108, Pacific Order in Council 1893.

¹⁴⁹ Section 52, Pacific Order in Council 1893.

¹⁵⁰ Heath, Charles Morris Woodford of the Solomon Islands, 71.

¹⁵¹ Section 6(1), Pacific Order in Council 1893.

¹⁵² Bennett, *Wealth of the Solomons*, 105.

facilitating sale of tortoiseshell to traders. His clan, however, had no land in the district but only usufructory rights over the unoccupied islets of Ozama and Liapari land. He allowed his supporters to plant coconut at Liapari and the traders to use Ozama as anchorage. Later, he sold the islet of Ozama to John McDonald and Jesse Davis. The real land owners did not complain because they had obtained guns and trade goods in the initial land deal and wanted traders to be near at hand.¹⁵³ Another example was in Nggai area where people claimed that men with only vague rights would usually sell land.¹⁵⁴ These two examples demonstrate that the Islanders involved in the land transactions were not passive subjects. They participated in and frequently manipulated the land deals for their benefit and to deceive the traders.

A constitutional issue relating to the proclamation of Solomon Islands as a protectorate was the scope of the Crown's authority. The prevailing legal theory during this period was that 'the protectorate was essentially a treaty by which uncivilized states placed themselves under the protection of European states'.¹⁵⁵ Under this regime the Crown could only manage the external relations of the uncivilised state, while the uncivilised state retained its internal sovereignty. The Crown could only assert control based on a treaty or concession agreement with local leaders. According to Clement Ng'ong'ola, in reference to Malawi, declaration of a territory as a protectorate did not provide the legal basis for the Crown to assume responsibility for land administration. Nor could it assert property rights in land and minerals unless these were obtained under a treaty or concession agreement with the Indigenous

¹⁵³ Bennett, *Wealth of the Solomons*, 88.

¹⁵⁴ Bennett, *Wealth of the Solomons*, 118.

¹⁵⁵ Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law*. Cambridge, University Press, 87.

people.¹⁵⁶ But, as Antony Anghie has shown, the distinction between external and internal sovereignty was not clear cut. This was because the Crown used the declaration of protectorate status as a vehicle for managing both the external and internal affairs of uncivilized people while asserting that sovereignty was vested with their local rulers. Such a view explains why colonisers could control the colonised under a protectorate regime, without being burdened by administrative costs.¹⁵⁷

In the case of the Solomon Islands, the Secretary of State for Colonies considered the idea that the Crown could enter into a treaty agreement with local rulers who should provide the revenue required for administering a loose British protectorate.¹⁵⁸ The High Commission in Fiji however advised the Colonial Office that this was not feasible because societies in Solomon Islands had many separate political units and authority was vested in individuals or groups of individuals such as big men, clan leaders, chiefs or heads of families. The High Commissioner instead recommended that a resident deputy commissioner be appointed to administer the BSIP. The Colonial Office in London in turn felt that this would burden the Crown with administrative costs, hoping that Australia would assume responsibility for Solomon Islands.¹⁵⁹

¹⁵⁶ Ng'ong'ola, C. (1990). 'The State, Settlers, and Indigenes in the Evolution of Land Law and Policy in Colonial Malawi', 29; see also Sack, P.G. (1974). 'The Triumph of Colonialism.' In Sack, P. (ed), *Problem of Choice: Land in Papua New Guinea's Future*. Canberra, Australian National University Press, 200-208.

¹⁵⁷ Anghie, *Imperialism, Sovereignty and the Making of International Law*, 88-9.

¹⁵⁸ Bennett, *Wealth of the Solomons*, 105.

¹⁵⁹ Bennett, *Wealth of the Solomons*.

3.7 Early Protectorate Land Law

Woodford approached the Colonial Office to be appointed Resident Commissioner immediately after Solomon Islands was declared a British protectorate in 1893. He made reference to his experience and connection with the Solomon Islands to demonstrate his suitability for the job. He also used his network through the Royal Geographical Society to arrange a personal introduction to the Secretary of State, Lord Ripon. Yet, although Woodford made a favourable impression on Lord Ripon, the Colonial Office was reluctant to spend money establishing a colonial administration in the British Solomon Islands Protectorate.¹⁶⁰ Woodford did not give up, and in January 1894 he applied again to the Colonial Office and wrote directly to Thurston informing him of his intention to pursue his scientific interests and at the same time maintain a colonial presence in Solomon Islands.¹⁶¹ The Colonial Office was interested in Woodford but Thurston declined the offer. Although Thurston liked Woodford as a person he doubted his seriousness as a colonial administrator. He wrote to the Colonial Office in London to express his concern that he ‘did not know if Woodford possessed any legal training or any administrative abilities’.¹⁶²

But Woodford persisted, moving to Fiji in October 1894. In December 1894, Thurston appointed Woodford as Acting Consul and Deputy Commissioner in Samoa.¹⁶³ During his time in Samoa, Woodford interacted with Samoans and observed German engagement in

¹⁶⁰ Heath, Charles Morris Woodford of the Solomon Islands, 32-33.

¹⁶¹ Heath, Charles Morris Woodford of the Solomon Islands, 33.

¹⁶² Lawrence, *The Naturalist and his 'Beautiful Islands'*, 136.

¹⁶³ For a detailed discussion of Woodford’s work in Samoa see Heath, Charles Morris Woodford of the Solomon Islands; see also Lawrence, *The Naturalist and his 'Beautiful Islands'*.

commercial plantation activities. The Germans had a total of 7,800 acres of plantations with '7,000 planted for copra. These commercial plantations in Samoa produced more than 2,000 tons of copra a year, a further 1,000 tons came from native plantations'.¹⁶⁴ While Woodford's time in Samoa was probationary, he appeared 'to have passed with satisfactory reports both from some members of the press and from the Foreign Office in London'.¹⁶⁵ When his appointment was terminated Woodford moved back to Fiji in September 1895, and took up a clerical position in the Western Pacific High Commission. At the same time, he was appointed as a 'Stipendiary Magistrate of Nadroga Province in the Sigatoka district of Viti Levu'.¹⁶⁶ Woodford's exposure to the plantation economy of Samoa and his time in Fiji as a clerk and Stipendiary Magistrate were experiences that would later inform his approaches as a colonial administrator.

Thurston moved to retain Woodford's services by writing to the Secretary of State, recommending that Woodford be appointed Resident Commissioner in Solomon Islands. The Colonial Office refused to fund the proposed appointment and thus when Woodford was transferred to the Solomon Islands in 1896 he was initially appointed as a Deputy Resident Commissioner for six months only.¹⁶⁷ In his role as Deputy Resident Commissioner, the first step Woodford took was to write to Thurston in June 1896 on the matter of land speculation in Solomon Islands, expressing the opinion that it was 'necessary to issue a notice to foreign

¹⁶⁴ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 166.

¹⁶⁵ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 167.

¹⁶⁶ Lawrence, *The Naturalist and his 'Beautiful Islands'*.

¹⁶⁷ UASC, WPHC 8/III/31, Vol. I.

residents with a view to put a check upon speculative land purchases'.¹⁶⁸ The intention should be focused on discouraging 'large and vaguely defined speculative purchases of which it [was] intended to make no use until they [could] be sold at a profit'.¹⁶⁹

Based on his experience and observation of commercial plantation activities in Samoa and Fiji and land transactions in Solomon Islands, Woodford recommended to Thurston the enactment of colonial land law to regulate land speculation and access for capitalist development. In a despatch of 4 July 1896 Woodford identified places like Tasimboko on Guadalcanal as suitable for sugar plantations, and the south coast of Malaita from Auki to Maramasike passage including along the islands of Manoba and Leili off the north coast of Malaita as better suited for coconut. Because the central and northern Solomon Islands were largely immune from cyclones, they were eminently suited for coconut plantation development and thousands of acres of seemingly unoccupied land was available for immediate planting.¹⁷⁰

Woodford then recommended to Thurston that the state should assume ownership of all 'unoccupied lands in the absence of evidence of native ownership'.¹⁷¹ This move should include the introduction of a system of leasehold tenure with strict condition of purchase that would be a source of revenue for the colonial administration. In the same despatch Woodford expressed his opinion that customary land tenure was insecure and, since Solomon Islanders

¹⁶⁸ Woodford to Thurston, despatch No. 1 of 6 June 1896 referred in Extracts from 'Report upon British Solomon Islands. C.M Woodford 1896.' UASC, WPHC 8/III/32, Vol. I.

¹⁶⁹ Report upon British Solomon Islands. C.M Woodford 1896. UASC, WPHC 8/III/32, Vol. I.

¹⁷⁰ Woodford to Thurston, Despatch No. 3 of 4 July 1896. UASC, WPHC 8/III/32, Vol. I.

¹⁷¹ Woodford to Thurston, Despatch No. 3 of 4 July 1896. UASC, WPHC 8/III/32, Vol. I.

frequently changed their places of residence, no injustice would be likely to arise if a state-sanctioned land alienation process were introduced.

Thurston was convinced by Woodford's argument for the early introduction of land legislation. Woodford's submissions appear to have influenced Thurston's decision that the 'sale of land should be subject to regulation' but that issuing 'a regulation with no means to enforce it was useless'.¹⁷² Thurston's line of reasoning would provide the rationale for Woodford's role as Resident Commissioner, which was central to shaping early colonial land law. Woodford arrived in Suva in November 1896 and was asked by Thurston to stay in Fiji for a month to assist in drafting the land regulations. Thurston considered Woodford's drafting role as crucial because of his 'superior local knowledge, so as to ensure that the Regulations [were] workable and sufficient'.¹⁷³

Woodford's field experience provided much of the moral justification for the enactment of waste land regulations. Like other resident Europeans, Woodford evidently regarded depopulation as contributing to the frontier idea of 'empty' spaces as unoccupied or 'waste' land. This assumption was consistent with the Western legal idea of 'waste', referring to land that was not in any one's occupation or land lying in common.¹⁷⁴ The Solomon (Land) Regulation of 1896 empowered the state to administer lands designated as 'vacant'. It also authorised the High Commissioner to grant leases on behalf of her Majesty to any 'land being

¹⁷² UASC, WPHC 8/III/31, Vol. I.

¹⁷³ Thurston to Secretary of State, Despatch No. 79 of 12, December 1896 referred to in Memo on Land Policy in the British Solomon Islands Protectorate. 1893-1914. UASC, WPHC 8/III/31, Vol. I.

¹⁷⁴ Little W., Fowler H.W [and] Couson J. (revised and edited by C.T Onions). (1970). *The Shorter Oxford English Dictionary on Historical Principles*, 3rd Edition. Oxford, Clarendon Press.

vacant by reason of the extinction of the original native owners and their descendants'.¹⁷⁵

The motivation for the state's introduction of the Regulation was not only to assert control over land perceived as 'vacant' but also to regulate land speculation and to generate revenue from such lands.¹⁷⁶ The language of the Regulation indicated that the state recognised the property rights of customary landowners only where they were perceived to be actually living on the land.¹⁷⁷ In this way, the notion of depopulation, and a sense of its inevitability, contributed significantly to the framing of early land law in Solomon Islands.

By 1896, several areas of land suitable for plantation and settlement were already in the hands of European settlers, whose numbers at this time were estimated to be about 50.¹⁷⁸ Many European settlers who had occupied land could assume good title in two ways: first, if they had an undisturbed length of occupation before the formation of British Solomon Islands; and second, if they complied with the development conditions under the Solomons (Land) Regulation of 1896. The Crown could not give indefeasible title to lands in the Protectorate. This meant that settlers could not be guaranteed legal security. There was no law regulating registration except the Regulation of 1896, which required that 'a copy of every conveyance

¹⁷⁵ Section 10, The Solomon (Lands) Regulation of 1896.

¹⁷⁶ For discussion on the objectives of legislation see Ruthven, D. (1979). 'Land Legislation from the Protectorate to Independence.' In Larmour, P. (ed), *Land in Solomon Islands*. Suva, Institute of Pacific Studies, USP and Ministry of Agriculture and Lands Solomon Islands, 239-248; see also Muria, J. (2002). Customary Land Disputes in Solomon Islands: A Search for Solution. Victoria University of Wellington, LLM Research Paper. Similar discussions were also held in relation to India's Waste Land Regulation; see Saigal, S. (2011). *Greening the 'Wastelands': Evolving Discourse on Wastelands and its Impact on Community Rights in India*. Report of the 13th Biennial Conference of the International Association for the Study of the Commons, Hyderabad, India. Bloomington, IN, Indiana University Press.

¹⁷⁷ For a similar argument see: Banner, *Possessing the Pacific*.

¹⁷⁸ Woodford, C.M. (April 1897). Report on the British Solomon Islands 1896. No. 8, Western Pacific, 5: In Papers of Charles Morris Woodford, PMB 1290 Reel 3, Bundle 13(2) Series 8/7.

or lease of native land under this Regulation must be deposited within six months from the date of execution thereof in the High Commission's Office'.¹⁷⁹ A Register of land claims was kept by the office of the High Commission in Fiji between 1896 and 1901. In 1900, High Commissioner Sir George O'Brien authorised Woodford to open a local Register, which he did on 23 July 1901. From that date all documents relating to the conveyancing and leasing of native land, including certificates of occupation, were registered and kept in the local Register.¹⁸⁰

Due to the lack of sanction either by an Order in Council or by a treaty with traditional authorities, the Crown could not assert authority over land throughout the Protectorate in order to give good title. The Pacific Order in Council of 1893 provided for the regulation of peace, order and good government but made no statement on whether ownership of land should be vested in the Crown. In order to secure land for the colonial administration it was necessary to enact legislation as an 'act of state' so that the Crown could transform customary land into a property regime under state control.

Woodford was still in Suva in February 1897 when he received news of his formal appointment as Resident Commissioner for the British Solomon Islands Protectorate. He returned to Marau in April 1897 and began the process of dealing with the regulation of the labour trade, the enforcement of quarantine regulations and the pacification of the islands by stopping headhunting practices. One of his immediate roles was to end the violence

¹⁷⁹ Section 9, The Solomon (Land) Regulation of 1896. Copy of this legislation accessed from UASC, WPHC MP No. 2-1911, 280/1911.

¹⁸⁰ F.H. May to Secretary of State for the Colonies, 18 March 1912. UASC, WPHC MP No. 240-1898. Note, today the local register is held in the Land Registry Office in Honiara.

associated with the headhunting and cannibalism that he had previously witnessed and observed. British subject interests, metropolitan capitalism and protectorate development demanded an end to the instability of this violence, and Woodford used the law as a tool to legitimise the use of state violence to ‘achieve pacification and the establishment of new forms of property’.¹⁸¹ Whenever a British subject was assaulted or killed, a state-sanctioned punitive expedition would be launched, at times with the assistance of other Islanders, often resulting in the destruction of villages and property of those implicated as the culprits.¹⁸² In the words of John Comaroff, such an approach can be described as ‘lawfare’, whereby the law is used as a tool to deploy violence regardless of whether the end justifies the means.¹⁸³ Such an approach to violence is no different to the approach of the Royal Navy, which Woodford had previously condemned.

Woodford’s use of violence to combat headhunting as well as other forms of atrocities against British subjects, was perhaps more effective than that of the Royal Navy. As a policy, it was designed to make areas with potential as plantation land safe both for European settlement and for the introduction of workers from other islands.¹⁸⁴ Woodford toured the islands on board H.M.S. *Plyades* in 1896 and, as with previous naval visits, ‘burnt a village in retaliation for the murder of the two men of the wrecked *Amelia*’.¹⁸⁵ However, this punitive action was

¹⁸¹ Monson, *Hu Nao Save Tok?* 157.

¹⁸² Bennett, *Wealth of the Solomon Islands*, 100; see also Monson, *Hu Nao Save Tok?*

¹⁸³ Comaroff, J. L. (2001). ‘Symposium Introduction: Colonialism, Culture, and the Law: A Foreword.’ *Law & Social Inquiry*, 26(2): 305-314.

¹⁸⁴ O’Brien, ‘Crime and Retribution in the Western Solomon Islands’.

¹⁸⁵ Jackson, *Tie Hokara, Tie Vaka*, 120.

no more satisfactory than the earlier Royal Navy actions, either as retribution or deterrent, because the Islanders simply retreated further inland whenever they saw an approaching man-of-war. Woodford was aware of this limitation and thereafter followed a process of pacification by adopting a 'colonial strategy of using 'friendly tribes' against other island groups' and also recruiting of 'white traders as armed militia'.¹⁸⁶

Woodford encouraged plantation development as a means of financing the British Solomon Islands Protectorate where 'most of the land available for plantations appeared to be in the New Georgia Islands and northern Guadalcanal'.¹⁸⁷ Therefore, the colonial administration's immediate attention and effort was directed towards pacification of these areas to facilitate the alienation of suitable land that would be accessible to foreign investors. Since the Royal Navy usually visited these areas on an annual basis, Woodford moved to set up a government station at Gizo in 1899. This was administered by a Deputy Commissioner, Arthur William Mahaffy, with the support of a police force comprising men from Isabel, Malaita and Savo, capable of responding quickly to incidents in the New Georgia region.

Between 1900 and 1901, Mahaffy and his police launched punitive expeditions on numerous communities renowned for their head hunting.¹⁸⁸ In January 1900, Mahaffy and his police assaulted the village of Kalikonggu in Roviana Lagoon, resulting in the loss of a life, the looting of the village and destruction of property; this was in retaliation for a head-hunting

¹⁸⁶ Bennett, *Wealth of the Solomons*, 106; see also O'Brien, 'Crime and Retribution in the Western Solomon Islands'.

¹⁸⁷ Bennett, *Wealth of the Solomons*, 107.

¹⁸⁸ For recent discussion on punitive expeditions in the Western Solomons see: O'Brien, 'Crime and Retribution in the Western Solomon Islands'.

raid by men from this village on the village of Bugotu on Isabel Island, which had resulted in the massacre of six people. A further punitive expedition in the Roviana area in 1901 led to one death, one person wounded, and the destruction of houses and canoes. Another punitive expedition in May of 1900 on the headhunters of Simbo resulted in the systematic destruction of 'houses, canoes, gardens and pigs until the locals capitulated'.¹⁸⁹

In November 1901, Mahaffy led a punitive expedition in the Mbilua region to capture the war chief Zito Latavaki, who had attacked the trader Jean Pascal Pratt following a failed arms deal in 1897. The party consisted of 32 police with the support of traders (Norman Wheatley, Thomas Woodhouse and Joseph Binskin), a new District Officer (William Hazelton) and local volunteers, mostly from Roviana, Kolombangara, and Simbo.¹⁹⁰ The impact was the destruction of ten villages, a hundred canoes were 'burnt or confiscated and Zito driven from his Mbilua hideout'.¹⁹¹ By 1901 these expeditions had led to the cessation of head hunting raids in the Roviana, Simbo and Mbilua areas but isolated incidents of violence between Islanders and Europeans continued.

In the Marovo area in 1908, local leader Ngatu and his men murdered Oliver Burns, an agent of the trader Norman Wheatley. A volunteer militia of traders and Arthur Sykes, an acting government officer and Inspector of Labour, embarked on a punitive expedition to Marovo in retaliation for the murder.¹⁹² Not long after, Woodford visited the area on board the H.M.S.

¹⁸⁹ Jackson, *Tie Hokara, Tie Vaka*, 128.

¹⁹⁰ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 223; see also O'Brien, 'Crime and Retribution in the Western Solomon Islands'.

¹⁹¹ Lawrence, *The Naturalist and his 'Beautiful Islands'*.

¹⁹² Lawrence, *The Naturalist and his 'Beautiful Islands'*, 220-221.

Cambrian; the crew went ashore and destroyed houses and canoes but the inhabitants of the village had all escaped. Due to continued attacks by Islanders in this area on plantation stores and the killing of Malaita labourers, another punitive expedition was carried out in December 1908 by Woodford. Accompanying him was a militia of Islanders from the Shortland Islands, the trader Norman Wheatley and Nesbit Heffernan, the District Magistrate of the Shortland Islands.¹⁹³ People fled to other areas to hide from the wrath of the colonial force. The massive destruction caused by this expedition on villages and property contributed to taming the Marovo frontier, making it safe for traders and their workers. Although Woodford's tactics varied from those of the Royal Navy only in his use of local militias, his continued presence and persistence had a profound effect, convincing the communities of Western Solomons that such punishment would continue until they stopped head hunting.

Between 1898 and 1905, land policy in the British Solomon Islands Protectorate was largely shaped by the:

protracted negotiation between the Pacific Islands Company and its successors, the chairman of which was Lord Stanmore, formerly Sir Arthur Gordon, the first High Commissioner for the Western Pacific, and the Colonial Office in London and between the Company's representatives in Australia, various High Commissioners, and the Resident Commissioner, Woodford.¹⁹⁴

Woodford played a central role in mobilising this network of alliances to encourage capitalist development in Solomon Islands. His implementing of The Solomons (Waste Lands)

¹⁹³ Bennett, *Wealth of the Solomons*, 107; see also Jackson, *Tie Hokara, Tie Vaka*, 179; and Hviding, E. (1996). *Guardians of the Marovo Lagoon: Practice, Place and Politics in Maritime Melanesia*. Honolulu, University of Hawai'i Press, 113.

¹⁹⁴ 'Memo on Land Policy in the British Solomon Islands Protectorate 1893-1914', 4 enclosed in UASC, WPHC 8/III/31, Vol. I.

Regulation of 1900,¹⁹⁵ with its subsequent amendments in 1901¹⁹⁶ and 1904,¹⁹⁷ succeeded in creating an attractive environment for settler investment by making more land available for acquisition. The process for designating land as ‘waste land’ was based largely on Woodford’s assessment with the support of a survey team that toured the islands on board the *Rob Roy* surveying possible land areas for plantation development. The areas selected for surveying were ‘Gizo, Kolombangara, Wana, on the New Georgia coast, on Isabel, and land on Guadalcanal’.¹⁹⁸ The survey teams spent over two months surveying areas in the Western Islands with twenty-five days on Kolombangara and Wana (now Vona Vona), investigating lands both upriver and along the foreshores.¹⁹⁹ The relatively sparse populations living in some of the areas surveyed supported the narratives around vacant land, and appeared to justify Woodford’s interpretation of them as unoccupied and waste lands.

Early colonial land law provided authorities with the necessary jurisdiction to issue Certificates of Occupation for any land categorised as ownerless or unoccupied,²⁰⁰ and encouraged a shift in land alienation from individual traders to plantation companies. This shift was made possible through surveying undertaken by colonial administrations. The maps produced through these surveys represented “textually” the frontier spaces available for

¹⁹⁵ Queen’s Regulation No. 3 of 1900.

¹⁹⁶ King’s Regulation no. 1 of 1901.

¹⁹⁷ King’s Regulation no. 1 of 1904.

¹⁹⁸ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 251.

¹⁹⁹ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 252.

²⁰⁰ For a more recent discussion of the waste land regulation see Lawrence, *The Naturalist and his 'Beautiful Islands'*, 246-248.

colonial possession or dispossession.²⁰¹ Blomley emphasises that the application of the survey and the grid on the frontier have been vital in facilitating development and the introduction of colonial law and violence. The frontier is a concept that justifies the deployment of colonial violence and law to facilitate and legitimise land alienation based on a private property regime that in turn encourages further European settlement and investment.²⁰²

After the survey by Woodford and his team,²⁰³ the Pacific Islands Company formally applied in May 1900 for a lease over a total of 200,000 acres. This total was composed of ‘70,560 acres on Kolombangara, 7,000 acres from the Vona Vona (same as Wana Wana), 5,350 from Ghizo and adjacent islets, 32,380 from New Georgia and the Hele islands’ with the remainder ‘taken up from islands in the Manning Straits, Isabel, Choiseul and Guadalcanal’.²⁰⁴ The majority of the land earmarked for alienation was from the Western Solomons, including 70,000 acres from Kolombangara alone.²⁰⁵ Most of the land surveyed and selected by Woodford was deemed to be unoccupied and the legal tool on which the colonial government relied on to make an offer in 1903 of a ‘Certificate of Occupation’ was the Waste (Lands) Regulation of 1900.²⁰⁶ Certificates of Occupation were issued by the colonial administration

²⁰¹ Porter, L. (2010). *Unlearning the Colonial Cultures of Planning*. Farnham, Ashgate eBook, 71.

²⁰² Blomley, N.K. (2003). ‘Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid.’ *Annals of the Association of American Geographers*, 93(1): 121-141, 125.

²⁰³ For discussion of how the survey was carried out see Bennett, *Wealth of the Solomons*, 131; see also Lawrence, *The Naturalist and his 'Beautiful Islands'*, 252-253.

²⁰⁴ Jackson, *Tie Hokara, Tie Vaka*, 143.

²⁰⁵ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 255.

²⁰⁶ Jackson, *Tie Hokara, Tie Vaka*, 143.-143; see also Bennett, *Wealth of the Solomons*, 128; and for a recent discussion on the amount of land granted to the Pacific Islands Company see Lawrence, *The Naturalist and his 'Beautiful Islands'*, 255.

to individuals or corporations on application, authorising them to occupy or take possession of land perceived as waste land.²⁰⁷

However, the Pacific Islands Company went into liquidation and its land concession was sold on to Levers Brothers' Pacific subsidiary, Lever's Pacific Plantations Limited, for £5,000 in 1906.²⁰⁸ The Lever's Pacific Plantations Limited went on to acquire land from traders such as Oscar Svensen and Norman Wheatley, and by 1911 the company 'had obtained 218,820 acres in the western and central Solomons under various tenures'.²⁰⁹ Burns Philp & Co was also involved in land alienation during the early colonial period, acquiring 'more than 800 acres of plantation land in the western Solomons' in 1904.²¹⁰

Another major landholder in the Western Solomons was the Methodist Mission. The Mission had purchased the Nusa Zonga land from trader T.G. Kelly in 1902.²¹¹ In the same year 'they purchased an estimated 250 acres at Kokenggolo for 15£' from chiefs Ingava, Gumi and Mia.²¹² They also purchased an estimated 600 acres at Mbanga for a nominal £1 from trader Lars Nielson.²¹³ These land transactions demonstrate that once colonial land law was implemented and backed up by colonial force, it became the legal apparatus that Europeans

²⁰⁷ Section 3 and 4, The Solomons (Waste Lands) Regulation 1904. This regulation repealed the Solomons (Waste Lands) Regulation 1900 and 1901.

²⁰⁸ Lawrence, *The Naturalist and his 'Beautiful Islands'*.

²⁰⁹ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 267.

²¹⁰ Bennett, *Wealth of the Solomons*, 129.

²¹¹ Jackson, *Tie Hokara, Tie Vaka*, 149.

²¹² Jackson, *Tie Hokara, Tie Vaka*, 149.

²¹³ Jackson, *Tie Hokara, Tie Vaka*, 150.

relied on to produce outcomes in their favour, particularly when alienating more land or engaging in speculative deals by reselling alienated land at a higher price without the original landowners being made aware of these subsequent transactions.

3.8 Conclusion

This chapter has examined Woodford's role in the early development of land legislation in Solomon Islands. The success of Woodford's role reflected his prior experience in the field and also depended on his ability to mobilise alliances. When Woodford first arrived in the Western Pacific as a naturalist, he experienced the pervasiveness of issues such as violence and depopulation in Solomon Islands; these he processed through the conceptual frames available to him, which were strongly influenced by ideas of racial difference and evolution common to the period. As the first Resident Commissioner, he was then uniquely positioned to drive the legal translation process and to create an actor network that influenced how early colonial land law was conceptualised and enacted.

Through processes of translation, Woodford was able to capture the interest of colonial officials such as Thurston. As Resident Commissioner, Woodford was an intermediary and broker between the Colonial Office in London, the Western Pacific High Commission in Fiji, local people and settlers.²¹⁴ The process of transforming Solomon Islands into a colonial state reflected the hegemony of the global flow of ideas that promoted law and order, capitalist development and Western civilisation through the enactment of property rights – all of which combined to create Woodford's essential frame of reference.

²¹⁴ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 3.

CHAPTER 4: Land Claims and Commissioners, 1919-1925

4.1 Introduction

The Lands Commission of 1919-1925 was a vehicle through which the BSIP colonial administration attempted to address land claims that arose due to land transactions prior to and during the early period of the protectorate establishment. The two Commissioners leading the process of land reform during this period were Gilchrist Gibbs Alexander and, subsequently, Frederick Beaumont Phillips.¹ Much of what has been written on the Lands Commission has centred on Frederick Beaumont Phillips, and emphasised his role in dealing with the land claims.² As a result, there is a tendency by scholars to refer to the Lands Commission as the Phillips Commission.³ In his study of the Lands Commission, Ian Heath examined its establishment and proceedings, the roles of both Alexander and Phillips as Commissioners, and the effects of the Lands Commission's presence in Solomon Islands.⁴ More recently Rebecca Monson has looked in some detail at the Phillips Commission,

¹ Moore, C. (2013). 'Phillips Land Commission.' *Solomon Islands Historical Encyclopedia 1893-1978* Online, <http://www.solomonencyclopaedia.net/biogs/E000223b.htm> (Accessed 18/01/2016).

² Ruthven, D. (1979). 'Land Legislation from the Protectorate to Independence.' In Larmour, P. (ed), *Land in Solomon Islands*. Fiji, Institute of Pacific Studies, USP and Ministry of Agriculture Lands, 239-248; Scheffler, H.W. and Larmour, P. (1987). 'Solomon Islands: Evolving a New Custom.' In Crocombe, R. (ed), *Land Tenure in the Pacific*. Suva, USP; Tagini, P. (2001). 'The Effect of Land Policy on Foreign Direct Investments in the Solomon Islands.' *Journal of South Pacific Law*, 5(3): Online <<http://www.pacii.org/journals/fJSPL/vol05/5.shtml>>; Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis.

³ Moore, 'Phillips Land Commission.'

⁴ Heath, I.C. (1981). *Land Policy in Solomon Islands*. La Trobe University, PhD Thesis.

exploring how property and authority have been shaped by custom, church and the state, particularly in regard to land claims in the Western Solomons.⁵

This chapter draws on the existing literature as well as primary archival research to reconstruct the roles of the two Commissioners, and to discuss how their interests and experiences were translated through the Lands Commission, the ‘laboratory obligatory point of passage’ in the Latourian sense,⁶ where solutions to land claims were developed. The state was able to convince landowners that if they wanted to resolve their land claims they would have to go to this ‘laboratory’. Unlike previous studies of the Lands Commission, this chapter seeks to convey a sense of the actors as agents, recovering the contributions of their individualism and their personalities.

I begin by discussing land alienation and land claims as part of a chain of events that led to the setting up a lands commission. I then describe the establishment of Lands Commission, before introducing Alexander and Phillips as actors appointed to work in the Lands Commission. This is important because it provides the basis for describing why and how they were appointed and how their background was influential in shaping the outcomes of the land claims they dealt with, resulting in the creation of colonial property rights. The final part of this chapter examines the decisions of Alexander and Phillips, so as to assess their role as actors in these decisions.

⁵ Monson, Hu Nao Save Tok?

⁶ Latour, B. (1983). ‘Give Me a Laboratory and I Will Raise the World.’ In Knorr-Centina, K.D. and Mulky, M. (eds), *Science Observed: Perspectives in the Social Study of Science*. London, Sage, 141-170.

4.2 Land Alienation

The establishment of the Lands Commission was a direct consequence of the rise in conflict over land alienation in Solomon Islands.⁷ The European notion of waste land played a critical role in the process, underpinned as it was by the ‘scientific’ theory of depopulation (Chapter 2). European residents in Solomon Islands, including Woodford, understood depopulation to be an inevitable process leading to the abandonment of ever-larger areas of land had a stereotype perception of the decline in population as evidence of extinction: ‘They had little appreciation of the land requirements of the native systems of horticulture, and they may well have believed the lands were waste’.⁸

The European perception of the Solomons as sparsely inhabited, with much of the land abandoned or waste, was closely linked to their understanding of property as a system with ‘rights ... bundled into a single geographic space’.⁹ This ‘spatial’ reasoning provided the basis for transforming customary land to property through the act of leasing. One example of apparent abandonment leading to alienation was the island of Tetepare, which was depopulated by the mid-1880s due to head hunting raids and epidemics as well as sorcery; the few Tetepare Islanders who survived fled to other islands for refuge. Commissioned for £50 by Burns Philp, Norman Wheatley ‘purchased almost the entire island of Tetepare from the owners Condor and Hindi. Burns Philp Company gave Wheatley £100 [in 1907] to pay

⁷ For discussion on land alienation see Cochrane, G. (1974). ‘Land Alienation: The Case for Traditionalists.’ *Oceania*, 45(2): 124-131.

⁸ Scheffler, H.W. (1965). *Choiseul Island Social Structure*. Los Angeles, University of California Press, 34.

⁹ Banner, S. (2002). ‘Transitions between Property Regimes.’ *The Journal of Legal Studies*, 31(S2): 359-371, S366.

the owners for over 30,000 acres'.¹⁰ Another example was the island of Gizo, abandoned around 1830-1840, again due to head hunting raids.¹¹ In 1886, the local leader Mengo 'sold most of Gizo and the surrounding islets, approximately 7,000 acres,' to Deutsche Handels- & Plantagen-Gesellschaft (DHPG), a Germany plantation and trading company.¹² DHPG also 'claimed possession of all vacant and ownerless land on the north east and west coasts of Kolombangara'.¹³

The legitimacy of the early land transactions depended on how the two parties met and signed the papers. Land deeds in Solomon Islands prior to and during the early years of colonisation were negotiated in a context where Europeans thought there was no real local concept of property: an 'anomic world without property'.¹⁴ As a means of giving legal recognition to land transactions in such a context, the colonial government in 1886 instructed that 'British subjects, desiring to register claims to land purchased' in Solomon Islands to 'forward for registration' deed of sale documents as evidence of such claims to the Secretary of the Western Pacific High Commission in Fiji.¹⁵

¹⁰ Bennett, J.A. (1987). *Wealth of the Solomons: A History of a Pacific Archipelago*. Honolulu, University of Hawaii Press, 145; see also Hviding, E. (1996). *Guardians of the Marovo Lagoon: Practice, Place and Politics in Maritime Melanesia*, Honolulu, University of Hawai'i Press, 108-109; Lawrence, D.R. (2014). *The Naturalist and his 'Beautiful Islands': Charles Morris Woodford in the Western Pacific*. Canberra, Australian National University Press.

¹¹ Nagaoka, T. (2011). Late Prehistoric-Early Historic Houses and Settlement Space on Nusa Roviana, New Georgia Group, Solomon Islands. University of Auckland, PhD Thesis, 301.

¹² Jackson, K.B. (1978). Tie Hokara, Tie Vaka: Black Man, White Man, a Study of the New Georgia Group to 1925. Australian National University, PhD Thesis, 95.

¹³ Jackson, Tie Hokara, Tie Vaka, 111.

¹⁴ Blomley, N.K. (2003). 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid.' *Annals of the Association of American Geographers*, 93(1): 121-141, 209.

¹⁵ Land Claims Embodied in the Notification of the 8 November 1886. UASC, WPHC No. 56/1889.

While the language of the deed of sale documents was based on western legal constructions, their legitimacy depended on how parties negotiated the land transaction. As Stuart Banner discusses in relation to land transactions on North America's frontier, the decision by Indians to sell their land occurred somewhere along a continuum between conquest and contract. In other words, every land transaction 'included elements of law and elements of power'. He writes that in the 'seventeenth century, when Indians and whites were close to being equally powerful', the 'early land sales were close to the "contract" end of the continuum'. But, 'as time went on, power relations between' the Indians and whites 'became more and more lopsided, and transactions moved ... to the "conquest" end'.¹⁶ Banner writes that '[b]y the late nineteenth century, there was little pretense that land cessions were voluntary in any meaningful sense of the word, even as they retained the form of negotiated treaties'.¹⁷ Banner's discussion of colonial land transactions in North America demonstrates how the extent of consent shaped the legitimacy of the land transactions.

Building on Banner, I argue that the land transactions in the Solomon Islands, both before and during the early protectorate era, occurred somewhere in the middle of a continuum from conquest to contract. One example is the land transaction referred to as Claim 79, which concerned land in Lango Bay on the north coast of Guadalcanal, bought by Kelly Williams and Thomas Woodhouse in November 1886 for £60.¹⁸ According to Woodford, this

¹⁶ Banner, S. (2005). *How the Indians Lost their Land: Law and Power on the Frontier*. Harvard, Harvard University Press, 4.

¹⁷ Banner, *How the Indians Lost their Land*.

¹⁸ Extract from "Report upon British Solomon Islands C. M Woodford 1896" enclosed in British Solomon Islands Protectorate. Documents on Land Policy. 1893-1914. University of Auckland Special Collections (hereinafter UASC), WPHC 8/III/32, Volume I.

transaction was purely speculative because the boundaries defined for the claim were very vague and no attempt had been made to take possession of the land. The land was later sold to Mr. Karl Oscar Svensen who then sold it to Levers at a huge profit. The second case study was the purchase of a tract of land at Wanderer Bay Guadalcanal in August 1891, referred to as Reg. Deed No. 115.¹⁹ This land conveyance was agreed between ‘Powra’, ‘Chopee’ and ‘Town’, and John Bolton Carpenter and Charles Edward Young. The land was subsequently transferred to the Guadalcanal Mining and Plantation Estates Company, registered in Melbourne, Victoria.²⁰ These land transactions were all registered in the Western Pacific High Commission books in Fiji, and all were later disputed by landowners.

Another example is the Baunani estate, my third case study field site.²¹ The first purchase of land in the area was in 1904 by Florence Young, an Australian missionary, to establish the South Seas Evangelical Mission. The broker was Mr. Alasion, a man from Baunani area, who had been taken to work in the sugarcane plantations in Queensland and had become a converted Christian.²² Florence Young decided to find a ‘company of “sympathetic Christian gentlemen” who might wish to render the mission a great service and at the same time find a safe investment in the Solomons. These “sympathetic Christian gentlemen” were her brothers from the Fairymead Plantation who formed the Malayta Company in 1908’.²³ The Malayta

¹⁹ Extract from “Report upon British Solomon Islands C.M Woodford 1896”.

²⁰ Lands Commissioner’s Report on Native Claim No. 41 respecting land at Wanderer Bay, Guadalcanal, 15 August 1925. UASC, WPHC MP No. 79-264, 2067/1924.

²¹ For a discussion of Baunani land alienation see: Totorea, D. (1979). ‘Baunani.’ In Larmour, P. (ed), *Land in Solomon Islands*. Suva, Institute of Pacific Studies, 74-84, 83.

²² Totorea, ‘Baunani’.

²³ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 240; see also Claim No. 1-16 & 51. Solomon Islands National Archive (hereinafter SINA), BSIP 18/II/I; see also Totorea, ‘Baunani’, 75.

Company established the 'Baunani copra plantation along 15 mile strip of coast (24 kilometres) that covered 10,000 acres (4,000 hectares) ... The land, previously owned by W.H. Pope, cost the Young family and their investors £35,000'.²⁴ In total, the company controlled approximately 4000 hectares of coastal land for plantation development, making the Baunani copra plantation 'the largest piece of alienated land' on Malaita.²⁵

These case studies demonstrate that while the Europeans applied their cultural logic in drafting land deeds to facilitate the transfer of property rights, they lacked the cultural knowledge to be aware of the relationship Islanders had with the land, which was based on a property system where rights were allocated on a functional or needs basis rather than divided and allocated by space.²⁶ This misunderstanding contributed to the change in the transformation by the state of the fundamental nature of property rights, from allocation of land by use to allocation of land by space. Many of the original land transactions during the pre-colonial and early colonial era followed a similar trend and were perceived by Woodford as speculative. It was against this background that Woodford, as the face of the colonial administration in Solomon Islands, sought and played a central role in the drafting of the Land Regulation of 1896 in order to restrict freehold sale of land. This first colonial land law stipulated that land transactions between Islanders and Europeans for a trading station or agriculture required the approval of the High Commissioner in Fiji, and further that one tenth

²⁴ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 240.

²⁵ Larmour, P. (1987). Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policymaking and Implementation before and after Independence in Papua New Guinea, Solomon Islands and Vanuatu. Macquarie University, PhD Thesis, Chapter 5, 13.

²⁶ Banner, 'Transitions between Property Regimes', 366.

of this land must be developed within the first five years, or it would revert to its original owners.²⁷

The rationale for this colonial land law was that the process of precolonial land transactions, which had involved direct negotiation between Islanders and Europeans, had been flawed on two grounds. First, the purchasers generally failed to investigate or ascertain the identity of the true owners of the land before the sale deeds were signed. Second, the purchasers were at a distinct advantage in negotiating land deals and drafting the sale deeds in their favour. Woodford was instrumental in drafting this legislation and was influenced by his understanding of the depopulation trend in Solomon Islands, as discussed in Chapter 3. The enactment of this legislation was intended to facilitate the transformation of property rights and to provide for the allocation of land to investors to stimulate large-scale plantation development in Solomon Islands.²⁸

Colonial law and violence, as discussed in Chapter 3, were the catalysts for legitimating land alienation in the New Georgia Group as well as other parts of Solomon Islands. Since, the frontier was conceptually a space of violence and emptiness it constituted an opportunity for Woodford to introduce his conceptual frame of pacification, law and order, and civilization, and to respond with punitive expeditions and the enactment of the waste land regulations.²⁹

²⁷ Lawrence, *The Naturalist and his 'Beautiful Islands'*, 245.

²⁸ For a more recent discussion of the waste land regulation see Lawrence, *The Naturalist and his 'Beautiful Islands'*, 246-248.

²⁹ Queens Regulation No. 3 of 1900 cited as The Solomons (Waste Lands) Regulation 1900 and King's Regulation No. 1 of 1904 cited as The Solomons (Waste Lands) Regulation 1904.

4.3 Land Claims

With the expansion of the colonial frontier and Woodford's transformation of violence through the legal application of force and effective pacification, disputes over alienated land amongst Europeans, between Europeans and Solomon Islanders, or amongst Solomon Islanders themselves became increasingly visible. This section describes how Woodford and other colonial officers dealt with some of these disputes in the Western Solomons and on Malaita. While each of these individuals was understood to be fulfilling a prescribed administrative role, in practice their handling of the disputes was often quasi-judicial in nature. This allowed considerable space for choices and decisions that reflected personal backgrounds and positions. Some of these disputes then emerged amongst the land claims that confronted Alexander and Phillips as Lands Commissioners. One of these land claims concerned land 'fronting the Sanoporu Bay, and opposite to the island of Ojama'.³⁰ As the culmination of a series of transactions, Peter Edmund Pratt, a European trader, had acquired the land at Sanoporu Bay on 21 July 1893 from chief Tolo and other local vendors.

4.3.1 Western Solomons

An early dispute in the Western Solomons was that between a European investor and the Methodist Mission regarding the island of Ojama and land in Sanoporu Bay area.³¹ Pratt who acquired the land at Sanoporu Bay had earlier bought one half of Ojama Island from Gustavus John Waterhouse on 26 February 1887 (who had himself bought it from Jesse Davis on 10

³⁰ Francis G. Clark to High Commissioner for the Western Pacific, 14 February 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

³¹ Francis G. Clark to High Commissioner for the Western Pacific, 14 February 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

October 1885) and the half from John McDonald on 1 October 1887. The original purchase of Ojama Island had been made by John McDonald and Jesse Davis on 13 February 1885 from Chief Tolo and other vendors.³² Copies of the land deeds regarding both pieces of land were registered in the Western Pacific High Commission office in Fiji. This sequence of records reveals how swiftly initial transactions between Islanders and Europeans translated land into a formal legal system and transformed it into property rights that could easily be transferred onto a third party.

However, these same lands had also been purchased by Rev. John Frances Goldie on behalf of the Methodist Mission on 9 July 1907 from another group of men who claimed to be landowners but who were not party to the original land sale.³³ This alternative land transaction was approved by High Commissioner Sir Everard im Thurn on 4 March 1908 and the land deed was registered. This land deed stipulated that the vendors transferred all their right, title and interest to the land to John Francis Goldie and his heirs.³⁴ Meanwhile, Peter Edmund Pratt sold the two parcels of land on to the traders, Charles Husen and Major Henry Joseph De Barry Barnett, operating in co-partnership as Husen & Co. According to Francis G. Clark, a Sydney lawyer representing Major Barnett, the partnership company was wound up in May 1910 by Messrs Burns Philp, and its properties (Ojama Island and land at Sanoporu Bay) sold by public auction with a conveyance executed in favour of Major Barnett. Mr. Clark then revealed that Major Barnett had sold the plantation at Liapari and the island of

³² Copies of deeds available at UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

³³ Woodford to High Commissioner, 17 April 1912, No 43. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248-1911.

³⁴ Copy of Conveyance of Land at Vella Lavella, Natives to Wesleyan Methodist Mission available at UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

Ojama to the Plantation & Trading Co Ltd but still continued to hold onto the portion of land on the mainland at Sanoporu Bay.³⁵ What this series of parallel dealings exposed was the competing interests both between Europeans and customary landowners, and amongst Europeans, over the transfer and sale of customary land.

In a letter to Major Barnett's lawyer Mr. Clark dated 10 January 1911, Resident Commissioner Woodford objected to the series of transfers from Pratt to Husen & Co, to Major Barnett, and then to the Plantation & Trading Co Ltd. Woodford's argument was that Pratt had failed to properly take possession of the lands he purchased. As a result, by virtue of the Real Property Limitation Act 1874, 'the ownership of the lands in question had reverted to the natives, and that Mr. Pratt had no power to convey to Mr. Husen'.³⁶ Based on this reasoning, Woodford gave legitimacy to the land transaction by Rev. Goldie on behalf of the Wesleyan Methodist Mission.

Mr. Clark challenged Woodford's judgement by writing to the High Commissioner of the Western Pacific because he was of the opinion that his client had good title.³⁷ The decision reached by the High Commissioner after consultation with his legal adviser was that Woodford's assumption that the Real Property Limitation Act of 1874 applied to BSIP was an error,³⁸ and that the claim by Major Barnett to the lands in question was a valid one; he

³⁵ Francis G. Clark to Resident Commissioner BSIP, 22 October 1910. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

³⁶ Resident Commissioner (Woodford) to Francis G Clark (lawyer), 10 January 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

³⁷ Francis G. Clark to High Commissioner for the Western Pacific, 14 February 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

³⁸ High Commissioner to Resident Commissioner (Woodford), 29 March 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

concluded ‘that application should be made to the authorities of the Wesleyan Mission to vacate the land’.³⁹ In his response to the High Commissioner, Woodford stated: ‘In the circumstances disclosed in your letter the mission will probably be advised and disposed to contest any steps which Major Barnett may take towards substantiating his claim to the land’.⁴⁰

The Wesleyan Mission disputed the High Commissioner’s suggestion that Major Barnett’s claim was valid. They claimed good title substantiated by certain circumstances and would not vacate the land.⁴¹ First, the Mission stated that Major Barnett had not acquired good title from Husen. The Resident Commissioner on 9 March 1909 had publicly investigated Husen’s title claim and declared it invalid. Second, they argued that Husen acknowledged their title to the land in question by taking a lease from them. Third, when Husen’s properties were sold by public auction to Major Barnett, no list of the properties was provided and the vendors expressly stated that ‘they could give no guarantee as to the title’.⁴²

Mr. Clark, on behalf of Major Barnett, argued that his client was not given notice of such investigation as claimed by the Mission, nor was he present, and that Husen had no authority to represent his client. He stressed that Husen’s alleged obtaining of lease from the Mission

³⁹ Secretary to the High Commissioner for the Western Pacific to Francis G. Clark (lawyer), 29 March 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴⁰ Resident Commissioner, Woodford to Secretary to the High Commissioner for the Western Pacific, 23 May 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴¹ Rev. B. Danks, General Secretary, The Methodist Missionary Society of Australia to The High Commissioner for the Western Pacific, 10 May 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴² Rev. B. Danks, General Secretary, The Methodist Missionary Society of Australia to The High Commissioner for the Western Pacific, 10 May 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

did not constitute an act of acknowledgement by his client of the Mission's title 'nor would it ...be any acknowledgement by Husen himself of any title superior to his own'.⁴³ Clark maintained that, based on the High Commissioner for the Western Pacific's decision, his client had a valid title but if the Mission thought 'it has title to the land, in the face of His Excellency's decision It should take steps to substantiate such title, and let the matter be fought out in a proper way, and under circumstances which will enable my client to properly protect his interests after due notice'.⁴⁴

Mr. Pybus, a European trader, acting on advice from Mr. Clark in Sydney and relying on the High Commissioner's decision that Major Barnett's claim was valid, attempted to remove coconuts from the disputed land. Mr. Nichol森, a representative of the Mission, opposed Mr. Pybus' removal of the coconuts, which resulted in a struggle that led to the two men assaulting each other.⁴⁵ Nichol森 asserted the property rights of the Mission by exercising the power of exclusion while Pybus exercised the property rights of Barnett by attempting to remove the coconuts resulting in the dispute between the parties. Missionaries and traders were now employing the vocabulary of possession, including terms such as title, interest and property rights, in order to exclude others.

On 2 April 1912, Woodford conducted an inquiry to resolve the dispute on board the *Belama*, which was anchored in Sanoporu Bay adjacent to the mainland opposite the piece of land in

⁴³ Clark to Rev. B. Danks, General Secretary, The Methodist Mission Society of Australia, 2 June 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴⁴ Clark to Rev. B. Danks, General Secretary, The Methodist Mission Society of Australia, 2 June 1911. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴⁵ Woodford to High Commissioner, 1912. No 43. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

dispute. Present on the *Belama* were Mr. Pybus, acting as attorney for Major Barnett (who had since deceased) and the Union Plantation and Trading Company Limited, and Messrs Goldie and Nichol森 representing the Wesleyan Mission.⁴⁶ According to minutes of the evidence taken during the enquiry, all of the vendors who were alleged to have sold the land in 1893 to Mr. Pratt were dead, except for Dookee, Binopi and Sonberree, who acted as witnesses during the enquiry. Through an interpreter, these witnesses claimed still to own coconut trees on the disputed land and stated that Mr. Pratt had not bought the land. They denied signing any papers concerning the alleged land sale in 1893. Another witness in the inquiry was Timbe, who claimed to be the actual owner of the land, while most of those vendors who had initially sold the land had only owned coconut trees in the disputed land.

Woodford, as the intermediary between the disputing parties, referred to the witness statements as the evidential basis in deciding that Pratt's claim was not genuine; the landowners were not paid, the vendors had no right to sell, and they did not understand what they were selling. He observed that 'Pratt cannot have landed on Vella Lavella at the time as it would have been unsafe for him or any other white man to do so at the time, so that any negotiation which took place must have been conducted upon a vessel afloat'.⁴⁷ Woodford's observation was unsurprising because there was no properly constituted court during this period and, due to the potential for violence, negotiating a land deal on board a vessel seemed

⁴⁶ Woodford to High Commissioner, 1912. No 43. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴⁷ Woodford to High Commissioner, 17 April 1912. No 43. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248-1911.

the sensible thing to do. Woodford's finding apparently reinforced his initial perception about land dealings as speculative and that Pratt had no good title to transfer the land in question. As for the land transaction by Rev. Goldie on behalf of the Methodist Mission, the purchase was subject to the Solomon Land Regulation 1896. One of the requirements under this legislation was that a tenth part of the purchased land must be developed within five years. Woodford reported that the Mission had failed to adhere to the requirements of the law, thus the Mission could be disposed of the land by forfeiture in 1913, assuming that Pratt's claim was rejected.⁴⁸ The agreement reached between Mr. Pybus and Rev. J.F. Goldie following the inquiry was that Mr. Pybus would continue to collect coconuts from the foreshore of Sanoporu Bay and make copra. This copra should be delivered to the Magistrate at Gizo who would then sell it to Messrs. Burns Philip and Co. Limited and any proceeds from the sale held in trust by the Magistrate until the issue of the ownership of the land in Sanoporu Bay was resolved by the High Commissioner for the Western Pacific.⁴⁹

Clark, the lawyer acting first for Major Barnett and then for the Union Plantation and Trading Company Limited, challenged Woodford's inquiry on the basis that his clients as the registered proprietors were not given notice or an opportunity to be represented.⁵⁰ Sir Charles Major, the legal adviser to the High Commissioner, refuted Woodford's actions by stating that Barnett had no obligation to give notice because the inquiry was purely executive rather than judicial. In the eyes of the colonial government, Woodford was playing an

⁴⁸ Woodford to High Commissioner, 17 April 1912. No 43. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

⁴⁹ Agreement arrived at between Mr. Pybus on behalf of the Union Plantation and Trading Co. Lt. and Rev. J.F Goldie after the enquiry at Vella. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248-1911.

⁵⁰ Clark to High Commissioner, 26 April 1912. UASC, WPHC MP No. 2-1911, 280/1911, MP No. 248/1911.

administrative role but in practice he was a key actor playing multiple roles. This included the drafting and implementation of the early protectorate land laws which sought to balance the need to control speculation while promoting capitalist development. The success of Woodford's role in framing the land legislation depended on his ability to make land issues in Solomon Islands a matter of concern for the Western Pacific High Commissioner, and to then turn them into grounds for the enactment of colonial land law. Woodford was able to do this because he had – and was acknowledged as having – the necessary knowledge and experience of how land issues impacted on the interaction between networks and actors.

4.3.2 Malaita

On the island of Malaita, another emerging situation saw Islanders staging a series of violent actions as a form of resistance against the Malayta Company and its labourers. Ernest and Horace Young started the Malayta Company as commercial trading and copra plantation venture started in 1908-1909. They were the brothers of Florence Young, founder of the South Seas Evangelical Mission.⁵¹ The company worked closely with SSEM on Malaita. As highlighted by Clive Moore, the 'missions vessel was used to recruit labourers, the plantations vessels were used by the mission, the mission head Norman Deck and his brother purchased land for the company ... the company made application to purchase land on behalf of the mission'.⁵² Since Malaita had no resident trader like elsewhere in the Protectorate, the Youngs and the Decks played a key role on behalf of the company to negotiate with Malaitans to acquire land. The Malayta Company's negotiations was motivated by the desire to acquire

⁵¹ Moore, C. (2017). *Making Mala: Malaita in Solomon Island, 1870s-1930s*. Canberra, ANU ePress, 345.

⁵² Moore, C. (2017). *Making Mala*, 345.

extensive land on the west coast of Malaita for plantation development, without much ‘concern with procedural fairness or establishing goodwill with the local people’.⁵³ As discussed by Moore, the Malayta Company’s land issues:

on Malaita were due partly to its staff’s inexperience, but also important was that Malaitans and others who had returned from Queensland and Fiji had a greater understanding of land values and were opportunistic in exploring the company.⁵⁴

The land area that the Malayta Company acquired was considered to be located ‘in the centre of a very much disturbed native district’.⁵⁵ During his time as Resident Commissioner, Woodford had warned the Company that ‘when they applied for the land, that the close proximity of the bush natives would be a source of trouble’.⁵⁶ The warning was hardly surprising because, as David Akin notes, although the government already had control of some coastal areas and had attempted to discipline Malaitans, the impact on inland dwellers remained minimal.⁵⁷

The Malayta Company’s plantation estate, with a defined boundary as approved by the colonial administration, was about fifteen miles from the coast. The company prevented people from trespassing on this plantation estate by erecting markers of spatial possession such as notices or by chasing them off the land. As revealed by Sub Inspector Kirke, many

⁵³ Moore, C. (2017). *Making Mala*, 346.

⁵⁴ Moore, C. (2017). *Making Mala*, 346.

⁵⁵ Frederick Barnett (Acting Resident Commissioner) to the High Commissioner for the Western Pacific, 25 January 1917. UASC, WPHC MP No. 78-328.

⁵⁶ Frederick Barnett (Acting Resident Commissioner) to the High Commissioner for the Western Pacific, 25 January 1917.

⁵⁷ Akin, D.W. (2013). *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*. Honolulu, University of Hawai’i Press and the Centre for Pacific Islands Studies, 37.

of the inland dwellers or “bush people” claimed that they had been improperly dispossessed, and that their right to access the coast during crab seasons was restricted or excluded.⁵⁸ To demonstrate their discontent, some of the inland dwellers began to act violently towards the company and its labourers. This ongoing friction resulted in the Malayta Company requesting police protection from the colonial administration for its labourers and property.⁵⁹ The company also began to arm its labourers and organise reprisals.⁶⁰

William Robert Bell, who was appointed as Malaita’s District Officer, arrived in Auki in October 1915 and immediately launched an investigation into the violence on Malaita. He pushed for an ‘aggressive pursuit of those who killed’.⁶¹ This placed him in direct confrontation with the acting Resident Commissioner, Frederick Barnett, who was not convinced that recourse to a punitive expedition to curb the violence was an effective approach⁶² and instead emphasised friendly meetings ‘between the present hostile tribes’ as a means of coming to an understanding that there was ‘another way of settling their differences than by killing each other’.⁶³ Barnett’s view on this matter has been described by

⁵⁸ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917. UASC, WPHC MP No. 78-328, 494/1917.

⁵⁹ C.E Young to Escott, 6 September 1915. WPHC 4, No. 2505 of 1915 cited in Heath, Land Policy in Solomon Islands.

⁶⁰ Barnett to R.B Hill, 30 June 1915, enclosed in Barnett to Escott, 27 August 1915. WPHC 4, No. 2734 of 1915 cited in Heath, Land Policy in Solomon Islands, 154.

⁶¹ Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*, 41.

⁶² Frederick Barnett to Escott, 2 March 1915. WPHC 4, No. 1152 of 1915 cited in Heath, Land Policy in Solomon Islands, 153.

⁶³ Acting Resident Commissioner to the High Commissioner for the Western Pacific, 25 January 1917. UASC, WPHC MP No. 78-328.

David Akin as “ignorant”.⁶⁴ I concur with Akin’s assessment on this because it does appear that Barnett was downplaying the severity of the situation.

Barnett’s response, following continued reports of violence on Malaita, was to deploy Sub-Inspector Kirke with twelve policemen on 16 November 1916 to ‘make a thorough investigation on the estates of the Malayta Company where the trouble was said to exist, to remain there and render such assistance as the circumstances required’.⁶⁵ Kirke reported that the Malayta Company’s plantation managers at Hulo and Baunani were unable to provide much useful information regarding the alleged perpetrators of the violence; that information came instead from Constable Joe and his assistant Albert.⁶⁶

Charlie Bona, one of the alleged culprits, when interviewed by Kirke, admitted his involvement in causing the trouble. He explained that his actions were provoked by the selling of his land by his relatives to the Malayta Company; and when he spoke to ‘one of the white men employed by the Malayta Company’ about this, there was no satisfactory response. This made him very angry because he knew he had lost his land and that the Company now claimed exclusive rights to it.⁶⁷ As a result, he had ‘made up his mind to make as much trouble for the Malayta Company as possible and for some years past he has paid bushmen to wander about Baunani, Hulo, and Manaba plantation to frighten the whites and

⁶⁴ Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*.

⁶⁵ Acting Resident Commissioner to the High Commissioner for the Western Pacific, 1 February 1917. UASC, WPHC MP No. 78-328, 494/1917.

⁶⁶ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917. UASC, WPHC MP No. 78-328, 494/1917.

⁶⁷ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917.

the labourers'.⁶⁸ Here Bona did all he could to continue to exert his claim over the land and to continue to use it. However, his actions were largely ineffective because the state had legally recognised the Malayta Company as having property interest over the land.

Kirke stressed that all the Islanders whom he interviewed had acknowledged that the original owner of the land in question was Charlie Bona and that 'many of the natives who sold land to the Malayta Company' had 'no idea where the boundaries [were], and seem most anxious that a well-defined boundary be cut'.⁶⁹ He further noted that the 'natives ... are very discontented over the sale of certain land which was once owned by them and is now held by the Malayta Company'.⁷⁰ The narratives and reactions of the Islanders, as revealed in Kirke's report, were very clearly understood and framed as contestation over land between Islanders and those who had property rights to the land.⁷¹

The District Officer for Malaita, William Bell, disagreed with the acting Resident Commissioner's approach, and took action to draw the attention of the Secretary of State to the ongoing violence on Malaita; he hoped that this would provoke an investigation to ascertain Malayta Company's title to the plantation estate and its right to exclude bush people from having access rights to the coast.⁷² First, he advised an assembly of Malaitans that taking

⁶⁸ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917.

⁶⁹ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917.

⁷⁰ Kirke, Sub-Inspector to Acting Resident Commissioner, 30 January 1917.

⁷¹ Tracey Banivanua-Mar makes a similar observation when discussing Kela, from Epi Island in Vanuatu who went to Queensland as an indentured labourer and was subsequently charged and sentenced for the death of Compan, a Polynesian labourer: Banivanua-Mar, T. (2007). *Violence and Colonial Dialogue: The Australian-Pacific Indentured Labor Trade*. Honolulu, University of Hawaii Press.

⁷² Secretary of State to Escott, 6 June 1917. UASC, WHPC 4, 1907/1917.

defensive action against armed Malayta Company labourers was justified if the BSIP government failed to protect them.⁷³ Second, he protested to High Commissioner Ernest Sweet Escott in Fiji and suggested a proactive approach to address the violence on Malaita. The acting Resident Commissioner Barnett argued that ‘Mr. Bell complicated matters by persisting to deal with the natives as if they were entirely acquainted with British laws, his one object being to cause the arrest of natives charging them with murder, a crime just as common with Malaita men as petty larceny is with us’.⁷⁴ Barnett removed Bell from the District of Malaita for insubordination at the end of 1916 but, not long after, Bell was reinstated by the new acting Resident Commissioner, Charles Workman and he resumed his proactive approach.⁷⁵

As on Malaita, the emergence of land disputes elsewhere in the Solomon Islands, such as on Guadalcanal in relation to the activities of Levers at Kukum, was largely to do with land assumed to be vacant and with its allocation under colonial land law to investors, traders and missionaries. Land law was the principal mechanism facilitating the transition from a spatial territory with overlapping customary land rights to a spatial or areal system of defined property rights.⁷⁶ This spatial allocation of land with defined property rights was disputed by Islanders, because it served the purposes of the colonial state and European investors rather

⁷³ Bell to Barnett, 27 November 1915, enclosed in Barnett to Escott, 4 December 1915. WPHC 4, No. 83 of 1916 cited in Heath, *Land Policy in Solomon Islands*, 154.

⁷⁴ Acting Resident Commissioner to The High Commissioner for the Western Pacific, 25 January 1917. UASC, WPHC MP No. 78-328.

⁷⁵ Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*, 41; see also Acting Resident Commissioner to High Commission for the Western Pacific, 25 January 1917.

⁷⁶ Banner, ‘Transitions between Property Regimes’.

than those of Islanders. These ongoing contestations, exacerbated by violent encounters, were a direct consequence of the enactment of colonial law and property rights over customary spaces and people, which made European investors legal owners of the land and turned customary landowners into trespassers.⁷⁷ The experience of violence then provoked discussion and debate amongst colonial administrators over how best to investigate these disputes.

4.4 Establishment of Lands Commission

Following the establishment of Solomon Islands as a British Protectorate, Solomon Islander objections to the acquisition and alienation of land by settlers, plantation owners and missionaries became increasingly visible. To address these land disputes, the acting Resident Commissioner, Frederick Barnett, suggested the appointment of a competent person to investigate the disputes.⁷⁸ He pointed out that the Islanders' land grievances needed to be settled as the basis for issuing of new Certificates of Occupation with clear titles, and that this would require the early appointment of a Commission, to be led by a Commissioner. The recommendation was that the Commissioner should be an 'unbiased and competent person', not one of the protectorate staff, and that 'the investigations should be as independent as possible and should not take a legal or magisterial form'.⁷⁹ It was envisaged that the investigation would 'probably extend over six months', that the person appointed would

⁷⁷ Blomley, 'Law, Property, and the Geography of Violence'.

⁷⁸ Barnett to High Commissioner, 1 August 1916: WPHC 4, No. 2289 of 1916 cited in Heath, *Land Policy in Solomon Islands*, 155.

⁷⁹ Acting Resident Commissioner to High Commissioner for the Western Pacific, 29 January 1917. UASC, WPHC MP No. 78-328, 490/1919.

travel from place to place to collect ‘evidence from both natives and white people as opportunity offers’, and that there would be ‘no need for legal formalities’ because investigation would be conducted by an entity other than a court.⁸⁰

Barnett discussed his proposal with the Crown Surveyor, Stanley George Curthoys Knibbs in January 1917.⁸¹ Knibbs, who was from Sydney, Australia, had worked previously with the Colonial Sugar Refining Co. (CSR) in Fiji. This had exposed him to the work of the Fijian Lands Commission, which was established in 1875 to deal with settler land claims. Knibbs moved to Solomon Islands in May 1913, where he was appointed Crown Surveyor in 1914.⁸² Knibbs found the proposal to set up a Lands Commission justified because there were evidently problems with the existing process of land alienation.⁸³ He explained that large tracts of land held under Occupation Licences by the large Levers Pacific Plantation Limited (LPPL) Company were contentious as many of these lands had always been occupied by ‘natives’, who appeared to have had no idea that these lands were alienated until cultivation occurred, which then stirred up trouble. Knibbs claimed that this had already been the case because on Kulambangara (Kolombangara) Island he ‘received a complaint from a native

⁸⁰ Acting Resident Commissioner to High Commissioner for the Western Pacific, 29 January 1917.

⁸¹ Acting Resident Commissioner to High Commissioner for the Western Pacific, 29 January 1917.

⁸² Knibbs was also appointed Superintendent of Public Works in 1918, Registrar of Land Titles from July 1919, and Chairman of the Mining Board under the Mining Regulation of 1927. He held these positions until he retired in 1939; Moore, C. (2013). ‘Land Administration.’ *Solomon Islands Historical Encyclopedia 1893-1978 Online*, <http://www.solomonencyclopaedia.net/biogs/E000223b.htm> (Accessed 18/01/2016).

⁸³ Crown Surveyor, Mr. Knibbs to Acting Resident Commissioner, 29 January 1917. UASC, WPHC MP No. 78-328, 490/1917.

that his land was being cultivated by the Company, and he had neither sold it nor received any payment for the use of it'.⁸⁴

In addition, Knibbs highlighted that there were many disputes arising in relation to land purchase in fee simple. The Kindar Estate on Arundel Island was one example, where the vendor claimed that the 'actual land sold was not that represented by the deed, but an adjoining piece'.⁸⁵ While the vendor's claim appeared to be very reasonable, it lacked supporting documentary evidence whereas the Kindar Company's claim had been upheld based on an Agreement of Sale approved by the Government. Another example was the Tenaru Estate on Guadalcanal, which extended 'nearly half way across the island' and also included several villages at some distance inland.⁸⁶ This showed that the 'purchaser did not make his way 7 or 8 miles inland in those days, and acquire the land from the real owners. The county is extremely broken and rugged'.⁸⁷

The exercise of government functions in the administration of B.S.I.P land laws was an issue that also contributed to land disputes because the government could neither grant indefeasible title to land nor guarantee a title. Knibbs queried whether doing a survey and collecting fees for this work implied an admission that would constitute a 'guarantee of a non-native's title to land'.⁸⁸ He pointed out that if the government lacked extended powers, then survey would

⁸⁴ Crown Surveyor, Mr. Knibbs to Acting Resident Commissioner, 29 January 1917.

⁸⁵ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁸⁶ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁸⁷ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁸⁸ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

neither ‘detract from nor add to any title’. The inconsistency between the description of land in a deed and the actually surveyed land would mean that the purchaser would effectively hold two titles, ‘one his conveyance from the natives, and the other the Government plan of the land recognised as being his’.⁸⁹ He suggested that in ‘the cases where many blocks of land [were] lying adjacent to one another, as at Shortland Islands and the deeds being somewhat loose, a survey of these blocks would be something of a compromise’. But dissatisfied parties could challenge this by litigation, and thus the survey would achieve nothing.⁹⁰

Knibbs criticised many of the old deeds as unreliable with vague descriptions. Therefore, ‘the rough plan on the conveyance is a better guide to the original intention than a lengthy description with bearings obviously misstated ... and distances very incorrectly stated’.⁹¹ While survey was vital to ascertain what land was intended for sale, in Knibbs’ opinion any departure from the deed’s wording would result in litigation because surveying would not alter the title. Instead, title to land:

stands upon its own merits and as the Government cannot improve it, the future may well have a well-nigh inextricable tangle to unravel. For the native vendors are constantly dying off and good evidence becomes more and more difficult to obtain as time goes on.⁹²

This widespread understanding of depopulation played a significant part in the colonial push for land registration to establish certainty of title to the land.

⁸⁹ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁹⁰ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁹¹ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁹² Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

Apparently, Knibbs was a very persuasive and influential actor. In January 1917, following his raising of these issues, the acting Resident Commissioner instructed him to report on the inclusion of a clause in the new Certificate of Occupation License that was to be issued to Levers. This clause provided ‘for the survey of sites claimed to be in native occupation, and their subsequent withdrawal where such claims are proved’.⁹³ But Knibbs submitted that the inclusion of such a clause would render the title defective and undermine the entire document by making the tenure of land precarious; as a result, Levers would not agree to the new certificate. He pointed out that the land in question was initially held by the Pacific Island Company under a Certificate of Occupation Licence issued by the colonial government. The issuing of the Certificate of Occupation Licence was done without careful inspection or adequate ascertainment of whether the land was occupied. This had resulted in numerous claims by Solomon Islanders to land comprised in the Certificate of Occupation Licence and other lands adjacent to Levers’ present plantations that were now disputed. Investigation might reveal further disputes of land remote from Levers’ more developed properties.⁹⁴

The colonial dispatches regarding the land disputes in BSIP and discussion between Knibbs and other colonial actors informed the Secretary of State, who decided that an investigation of the land disputes was necessary. In June 1917, the Secretary of State requested a report on the dispute regarding Malayta Company’s title to the land at Hulo and how this should be investigated to address the landowner complaints.⁹⁵ He pointed out that the information

⁹³ Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.

⁹⁴ Crown Surveyor, Mr. Knibbs to Acting Resident Commissioner, 29 January 1917.

⁹⁵ Secretary of State to High Commissioner for Western Pacific (Sir Bickham Sweet-Escott), 6 June 1917. UASC, WPHC MP No. 78-334, 1907/1917.

received about the Malaita situation was inadequate, revealing only that there was an ongoing dispute between the Company and landowners.⁹⁶ There was also a need to report on the situation on other islands in the BSIP where Levers had landholdings based on Certificates of Occupation Licence; as Knibbs pointed out, a preliminary enquiry was desirable ‘to ascertain the extent of the Native claims so that the Government may become fully aware of all the facts’.⁹⁷

In November 1917 the District Officer on Malaita, William Robert Bell from Victoria, Australia, with the assistance of Knibbs, investigated the Malayta Company’s land holdings on Malaita. They produced a report that favoured the Islanders’ claims. Bell, as an ‘upholder of regulations’,⁹⁸ observed in the report that the Islanders’ interests were inadequately safeguarded when the various lands claimed by the Malayta Company had been alienated. Also the Company failed to respect the village reserves allowed in the conveyance. He stated that a sub-manager at Hulo told him that the Islanders were disputing certain boundaries and produced a document written in pencil that showed the description of the Hulo boundaries according to the conveyance, which was furnished to him by the General Manager of the Malayta Company. Bell claimed that he cross-checked this with the description of the Hulo boundaries in the registered conveyance at Tulagi and found some inconsistency. Based on his inspection of the conveyances, Bell found that the Malayta Company had acquired the lands in question but added ‘there is no doubt that the natives did not understand the

⁹⁶ Secretary of State to High Commissioner for Western Pacific (Sir Bickham Sweet-Escott), 6 June 1917.

⁹⁷ Crown Survey, Knibbs to Acting Resident Commissioner, 7 June 1917. UASC, WPHC MP No. 78-333, 1824/1917.

⁹⁸ Moore, C. (2013). ‘Bell, William Robert (1876-1927).’ *Solomon Islands Historical Encyclopedia 1893-1978 Online*, <http://www.solomonencyclopaedia.net/biogs/E000223b.htm> (Accessed 18/01/2016).

boundaries as described’ and ‘according to the Conveyance, the natives whose names appear thereon have sold the land which they could not legally convey’.⁹⁹

As Bell pointed out, one of the factors contributing to the dispute was the absence of any government officer during the time when the conveyance was executed to verify the authenticity of the vendors and the accuracy of the boundaries as stipulated in the land deeds.¹⁰⁰ Given the complexity and contested nature of traditional land tenure systems, the presence of government officers would not necessarily guarantee that any of these issues were satisfactorily determined or resolved. Knibbs’ report largely substantiated Bell’s observations. He revealed that there were ‘several village sites ... reserved to the natives’ situated on the extensive tract of land resulting in many disputes between the Company and villagers ‘regarding boundaries of the reserve sites’.¹⁰¹ The reports of these colonial officers confirmed that Islander understandings of customary land rights were different from the Company’s understanding of property rights. There was no process in place to ascertain the real owners of the alienated land. However, such a process would not have been possible during this period because there was no legislative mechanism in place to facilitate its introduction. The conveyance was executed in a domain where there was no state presence to ascertain the status either of the vendors and or of the boundaries.

⁹⁹ Additional report of Acting District Officer, Malaita, 11 November 1917. WPHC MP No. 78-340, 237/1918.

¹⁰⁰ Additional report of Acting District Officer, Malaita, 11 November 1917.

¹⁰¹ Report of Crown Surveyor, 5 November 1917. UASC, WPHC MP No. 78-340, 237/1918.

In December 1917, Knibbs travelled on board the Police Cutter 'Afa' to Ysabel, Gizo and then the New Georgia group to 'investigate land actually occupied' by the Islanders in order to ascertain the 'questions arising on Messrs Levers Certificate'.¹⁰² Knibbs report 'undermined the whole foundation of the Certificate of Occupation License'¹⁰³ because it questioned the basic foundational concept of unoccupied or waste land. He pointed out that land occupied by Islanders had no definite boundaries and gradually merged into unoccupied territory. Their method of gardening was shifting cultivation, which meant that they would use the land and then leave it unoccupied for an undefined period of time before cultivating it again. Hence, landowners occupied different areas of land at different times and it was not proper to consider such land permanently unoccupied or waste land as almost all land was ultimately used by Islanders.¹⁰⁴ Knibbs made it clear that the idea of boundary in relation to customary land was understood by Islanders as neither definite nor static, and occupation was related instead to notions of ownership shaped by gardening activities.

The reports by Bell and Knibbs provided further evidence of the range and extent of disputes in the Protectorate. Both of them supported the idea of appointing a person sanctioned by the state to investigate and settle these disputes. Bell recommended that the person appointed should have thorough legal training, and be assisted by the Crown Surveyor and a Protectorate officer with prior experience of Malaitan custom in regard to land inheritance. He suggested that the custom of land inheritance on Malaita was not similar to that of islands

¹⁰² Acting Resident Commissioner to High Commissioner for Western Pacific, 8 December 1917. UASC, WPHC MP No. 78-340, 242/1918.

¹⁰³ Heath, Land Policy in Solomon Islands, 160.

¹⁰⁴ Knibbs to Workman, 5 January 1918, enclosed in Workman to High Commissioner, 12 January 1918. WPHC, No. 434 of 1918 cited in Heath, Land Policy in Solomon Islands.

such as Ngela, Ysabel and Guadalcanal and possibly to other islands in the Protectorate.¹⁰⁵ Bell further recommended that before the proposed court or commission sat to hear the disputes, the District Officer should obtain a list of all the disputed land and names of claimants and witnesses and then give a copy to the Malayta Company in order to expedite the process of hearing.¹⁰⁶ Knibbs added that ‘This subject is but another instance of the evils arising from the looseness in land conveyance in the past, and like most other disputes can only be settled by a through [*sic*] investigation into the validity of the titles’.¹⁰⁷

Convinced by the evidence produced by Knibbs and Bell on land disputes in BSIP, the High Commissioner wrote to the Secretary of State requesting his approval of the proposal to appoint a Lands Commissioner. The High Commissioner expanded on the rationale provided by Knibbs for a commission by suggesting that the terms of reference should focus on investigating and reporting on (a) native land claims and the validity of any documents on which these claims are framed; (b) the functionality of the Solomons Land Regulation and any amendments deemed necessary; (c) any matters related to land tenure and disposal of land in the Protectorate.¹⁰⁸ The Secretary of State agreed with the general proposal but considered the terms of reference too broad and refused to sanction a thorough investigation. Instead he decided the Commission should restrict its investigations to specific claims to land alienated as the result of a conveyance process and currently held by British subjects or

¹⁰⁵ Additional report of Acting District Officer, Malaita, 11 November 1917. UASC, WPHC MP No. 78-340, 237/1918.

¹⁰⁶ Additional report of Acting District Officer, Malaita, 11 November 1917.

¹⁰⁷ Report of Crown Surveyor of 5 November 1917.

¹⁰⁸ High Commissioner to Secretary of State, 23 March 1917. WPHC 4, No. 490 of 1917, cited in Heath, *Land Policy in Solomon Islands*, 157.

others.¹⁰⁹ The Secretary of State's decision was anticipated because a lengthy investigation into people's land rights was a difficult task, as demonstrated by the work of the Fiji Lands Commission which had started in 1880 to investigate Fijian land rights. Such a lengthy investigation would require more time, which could potentially delay the process of finalising secure titles for land plantation companies such as Levers and also put a burden on BSIP's limited financial base.¹¹⁰

4.5. Lands Commissioners

Appreciating how Alexander and his successor Phillips came to be appointed Lands commissioners is important in helping to examine their experiences and perspectives; it provides a basis for explaining their role as actors and understanding how they arrived at particular decisions on the land claims. This section provides detail on the backgrounds of Alexander and Phillips to show how their interests and the interests of land claimants were translated through the Lands Commission, the critical point of passage for land claim solutions.¹¹¹

4.5.1 Gilchrist Gibbs Alexander

After consultation with the Resident Commissioner of BSIP, the High Commissioner recommended in March 1919 to the Secretary of State that the appointment of Lands

¹⁰⁹ Secretary of State to High Commissioner, 19 June 1917. WPHC 4, No. 2238 of 1917, cited in Heath, Land Policy in Solomon Islands.

¹¹⁰ Heath, Land Policy in Solomon Islands, 158.

¹¹¹ Gershon, I. (2010). 'Bruno Latour (1947–).' In J. Simons (ed.), *Agamben to Zizek: Contemporary Critical Theorists*. Edinburgh, Edinburgh University Press, 161-176.

Commissioner be offered to G.G. Alexander, the Chief Police Magistrate of Fiji.¹¹² The High Commissioner emphasised that the appointment of Alexander ‘would be acceptable’ to Mr. Workman, the Resident Commissioner of BSIP, and that he was someone ‘well fitted for the work’.¹¹³ Alexander, who was on leave in England at the time,¹¹⁴ was officially appointed as sole Lands Commissioner pursuant to the Solomons and Gilbert and Ellice Islands (Commission of Inquiry) Regulation 1914.¹¹⁵ His terms of reference were limited in scope because he was specifically required to inquire into and report upon specific Islander land claims, namely, alienated land now held by non-Islanders and the right of way or other customary rights associated with any leased land.¹¹⁶

Alexander was born in 1868 in Glasgow, where his father was a businessman. He studied at the Glasgow Academy and then for a degree in Mental Philosophy at the University of Glasgow. After graduating in 1893, he moved to London to study and practice law, beginning as a pupil in a firm of solicitors in London before taking up residence in the Temple in a set of chambers at No. 2 Brick Court, working closely with legal professionals and judges.¹¹⁷ Alexander remained in this working environment until he moved to Fiji in 1907. There he moved swiftly through the legal ranks, appointed Chief Police Magistrate in 1907, and then

¹¹² High Commissioner for the Western Pacific to Secretary of State, 14 March 1919 included in UASC, WPHC MP No. 78-339, 38/1918.

¹¹³ High Commissioner to Secretary of State, 14 March 1919.

¹¹⁴ Secretary of State for the Colonies to High Commissioner for the Western Pacific, 14 April 1919. UASC, WPHC 4 MP. No. 76-206, 888/1919.

¹¹⁵ Section 3, Solomons and Gilbert and Ellice Islands (Commission of Inquiry) Regulation 1914.

¹¹⁶ Draft – Commission: By Charles Workman Acting Resident Commissioner of BSIP to Alexander Gibbs Gilchrist. UASC, WPHC 4 MP. No. 76-206, 888/1919, WPHC 4/IV.

¹¹⁷ Alexander, G. (1927). *From the Middle Temple to the South Seas*. London, John Murray.

acting Attorney General and Chief Justice in 1913, while the Chief Justice of Fiji, Sir Charles Major, was on leave.¹¹⁸ Alexander was also appointed chairman of the Commission set up in 1913 to investigate shipping conditions and facilities in Fiji. This Commission held sittings at various locations throughout the country, examined 66 witnesses and produced a report in 1914.¹¹⁹ Alexander's experience in Fiji provided him with exposure to a frontier colonial society along with direct involvement in the conduct of law and order.

As acting Chief Justice, Alexander also filled the role of Judicial Commissioner of the Western Pacific and gave legal advice on all matters arising in Fiji or the Western Pacific. By this stage of his career, Alexander was thoroughly familiar with the issue of alienated land. In one instance, he was asked by the Executive Council in Fiji to give advice on the Suvavou people's petition regarding the alienation of their lands on the Suva Peninsula.¹²⁰ This land had been sold by Ratu Seru Cakobau to the Polynesia Company of Melbourne, Australia in repayment of a debt of U.S \$42,248 owed by the Cakobau government to the United States government. The Company subdivided approximately 27,000 acres of this land for sale to European settlers and set aside approximately 300 acres as native reserves.¹²¹ The British government subsequently acquired the Suva Peninsula from the Polynesia Company when the Fiji Islands were ceded by Cakobau and other high chiefs to Great Britain, and this move perpetuated the alienation process.

¹¹⁸ Alexander, *From the Middle Temple*, 133-138.

¹¹⁹ Alexander, *From the Middle Temple*, 137-138.

¹²⁰ Miyazaki, H. (2006). *The Method of Hope: Anthropology, Philosophy, and Fijian Knowledge*. Stanford, Stanford University Press.

¹²¹ Miyazaki, *The Method of Hope*, 32.

When the capital of Fiji was moved from Levuka, on the island of Ovalau, to Suva in 1882, the Suvavou people who lived on the 'Native Reserve' known as Old Suva Village or Naiqasiqasi were relocated to Narikosa. The government arranged to pay the Suvavou people 200 pounds annually.¹²² The Suvavou people challenged this arrangement in later years but, according to Alexander's advice, the Crown had good title. His advice was based on the 1887 opinion of a former acting Attorney General, Sir Francis Winter, who had stated that the Crown had 'absolute proprietorship' of the land in question because the 'Crown has been in possession of the land' for a good number of years 'and has exercised rights of absolute ownership with the knowledge and acquiescence of the natives'.¹²³ The opinion formed by Alexander on the Suvavou people's land claim was grounded firmly within a western formal property rights frame, an influence that would persist in his role as Lands Commissioner investigating and reporting on Islander land claims in BSIP.

Alexander arrived in BSIP in December 1919 but there had been little preparation to set up the Lands Commission and no list of land claims was available. Alexander's immediate task was to ask the acting Resident Commissioner, Charles Workman, to collate a list of non-native land holdings.¹²⁴ He proceeded to deal first with claims to developed land held by non-Islanders, because they could be simply resolved once the boundaries had been ascertained. It was easy for him to do this because a register of land purchased by settlers, plantations owners and missionaries was initially kept by the office of the High Commission in Fiji,

¹²² Miyazaki, *The Method of Hope*, 33 and 36.

¹²³ Miyazaki, *The Method of Hope*, 40.

¹²⁴ Heath, *Land Policy in Solomon Islands*, 161-162.

replaced in 1901 when Woodford opened a local Register for the BSIP; claims to underdeveloped land would be dealt with later.

In BSIP, Alexander appeared to follow a court-like timetable, in which the emphasis was on timely settlement of claims. He began by visiting the districts and examining land papers in Tulagi. Then he travelled to Australia in March 1920 to attend a family event. He used this trip to meet with company representatives whose ‘titles appear to be so precarious’ in the hope of arriving at an out-of-court settlement.¹²⁵ Alexander evidently wanted to process the claims as quickly as possible, perhaps drawing on the prior experience of a more transactional approach to dispute resolution as Police Chief Magistrate. Where there was a valid claim, it should be dealt with promptly, and where the claim was less pressing the parties should be encouraged to arbitrate and negotiate a settlement.

Alexander returned to BSIP in July 1920 and finally left in August to take up a new appointment as a judge in Tanganyika – a demonstration of the mobility of colonial experts and their ability to exert influence and transfer experience from one colonial territory to another.¹²⁶ Along with Alexander’s experience as Chief Police Magistrate, acting Chief Justice and chairman of the Commission of Inquiry in Fiji, his experience in BSIP as Special Lands Commissioner would influence his work in Africa. His formation as a judge in the Pacific equipped him with the legal tools to work in Africa: to run circuit courts, conduct

¹²⁵ Charles Workman, Acting Resident Commissioner to High Commissioner for the Western Pacific, 31 December 1919. UASC, WPHC 4IV AU Microfilm 79-214, 147/1920.

¹²⁶ David Akin documents how ideas such as indirect rule and protectorate senior officials were transferred from African colonies to Solomon Islands: Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*.

special tribunal hearings, supervise court clerks and interpreters, inspect case records, and assist the Chief Justice in drafting court rules.¹²⁷

4.5.2 Frederick Beaumont Phillips

The sudden departure of Mr. Alexander provoked great indignation on the part of the counsel for Levers and the Seventh Day Adventist church because ‘Messrs Lever’s new Certificate of Occupation and the claims at Ugi and against the Seventh Day Adventists had not been dealt with, neither were the negotiations recommended by the Lands Commissioner on Malaita and elsewhere completed’.¹²⁸ As a result, the Resident Commissioner for BSIP, Charles Workman, suggested the appointment of a Lands Commissioner from Fiji as a swift option for replacement of Alexander.¹²⁹ However, High Commissioner Sir Cecil Hunter-Rodwell expressed the opinion that it would be out of the question to appoint another officer from Fiji due to a shortage of staff.¹³⁰

The High Commissioner turned instead to Australia,¹³¹ writing to the Governor General on 28 August 1920 to explain the circumstances and to request that the Australian Government

¹²⁷ Swanepoel, P. (2010). *Indifferent Justice? A History of the Judges of Kenya and Tanganyika, 1897-1963*. The University of Edinburgh, PhD Thesis.

¹²⁸ Charles Workman, Resident Commissioner to High Commissioner for the Western Pacific, 22 September 1920. UASC, WPHC 4/IV AU Microfilm 79-221, 1999/1920.

¹²⁹ Workman, acting Resident Commissioner to High Commissioner for the Western Pacific, August 24 1920; see also Private Secretary to Governor, “Pioneer”, Levuka, August 25 1920. UASC, WPHC 4/IV, AU Microfilm 79-221, 1999/1920.

¹³⁰ High Commissioner on “Pioneer” to Secretary, High Commission, 26 August 1920. UASC, WPHC 4/IV. AU Microfilm 79-221, 1999/1920.

¹³¹ High Commissioner for the Western Pacific to Governor General, Melbourne, August 28 1920. UASC, WPHC 4/IV AU Microfilm 79-221, 1999/1920.

recommend a barrister for the appointment because of the urgent need for a successor.¹³² While waiting for a response from Australia, Rodwell also wrote to the Agent and Consul in Tonga enquiring whether the Chief Justice of Tonga, Herbert Cecil Stronge, would be willing to take up the appointment.¹³³ Stronge, who was from Ireland, had been appointed Judge in Tonga in 1917, having previously acted as a Stipendiary and Circuit Magistrate in the Bahamas from 1911.¹³⁴ Stronge declined the offer, citing family reasons and remarking that the remuneration was ‘insufficient inducement in consideration of danger of infection and other tropical diseases’.¹³⁵ Although Stronge was part of the flow of experts from one colony to another, he drew the line at Solomon Islands.

The Solicitor General for the Commonwealth of Australia, who was acting for both the Governor General and the High Commissioner for the Western Pacific, began negotiations with Frederick Beaumont Phillips in Melbourne regarding his possible appointment as Lands Commissioner.¹³⁶ Although Phillips did not have prior experience as a judge, judicial commissioner or even chairperson of a commission of inquiry, he was prepared to take a structural approach to address the BSIP land claims. In other words, Phillips was willing to

¹³² High Commissioner for the Western Pacific to Secretary of the High Commission, August 26 1920.

¹³³ High Commissioner for the Western Pacific to Agent and Consul, Tonga, 7 September 1920; for a discussion on Stronge’s role as Judge in Tonga see: Ellem, E.W. (1989). ‘Chief Justices of Tonga 1905-1940.’ *The Journal of Pacific History*, 24(1): 21-37.

¹³⁴ Genealogy.com. (2001). ‘Stronge, Harvey, Bahamas 1911-1917’. Online <<http://www.genealogy.com/forum/regional/countries/topics/bahamas/546/>> (Accessed 16/01/2017).

¹³⁵ Agent & Consul, Tonga to High Commissioner for the Western Pacific, 11 September 1920. UASC, WPHC 4IV AU Microfilm 79-221, 1999/1920.

¹³⁶ Frederick Beaumont Phillips to the Resident Commissioner, 22 April 1922. UASC, WPHC 4 IV 1922, AU Microfilm 79-239.

deal with the land claims by paying closer attention to the social norms in relation to land, taking explicit account of them as well as considering evidence in support of the claims.

Phillips was born on 20 January 1890 at Ballarat in Victoria, Australia.¹³⁷ He went to school at Wesley College, took a law degree at University of Melbourne, and was admitted to the Supreme Court of Victoria in 1915. He served briefly from 1917 with the Australian Army Medical Corps in Egypt and England before joining the Australian Flying Corps in January 1918 as a 'flying officer with observer's wings and a reputation for efficiency and initiative'.¹³⁸ He received a commission as lieutenant of the Australian Imperial Forces in April 1919. In 1920, he was demobilised in Melbourne where he took up work as a barrister and solicitor, working with the law firm Messrs W.B & O. McCutcheon; Walter Bothwell McCutcheon was a leading lay member of the Methodist Church, a connection that would become significant for Phillips.¹³⁹

His experiences in the war and in law, together with his upbringing in Australia and links to the Methodist church, were all factors that would influence Phillips' approach and decisions as Lands Commissioner in Solomon Islands. With the recommendation of Phillips by the Commonwealth Government of Australia,¹⁴⁰ the High Commissioner duly appointed him as

¹³⁸ Frederick Beaumont Phillips to the Resident Commissioner, 22 April 1922.

¹³⁹ Obituary - Mr. W.B. McCutcheon. (Thursday 24 May 1934). *The Argus* (Melbourne, Vic: 1848-1957), National Library of Australia, 8.

¹⁴⁰ R.R. Garran, Secretary Commonwealth of Australia, Attorney General's Department, Melbourne to F. Beaumont Phillips, 22 September 1920; see also Governor General to High Commissioner for the Western Pacific, 15 September 1920 both in UASC, WPHC 4/IV AU Microfilm 79-221, 1999/1920.

Lands Commissioner and requested that he proceed to the Solomons as soon as possible.¹⁴¹ Phillips arrived in the Solomon Islands on 6 November 1920 and immediately assumed his duties as Lands Commissioner.¹⁴² His appointment was under the Solomons and Gilbert and Ellice Islands (Commission of Inquiry) Regulation 1914 and on similar terms as the previous Lands Commissioner, Alexander.¹⁴³ His plan to execute his terms of reference was based on the understanding that transport would be available; he estimated the time required to complete his task at four months.¹⁴⁴

Shortly after his arrival, Phillips discovered that considerably more time would be needed for the work of the Lands Commission. Alexander had left few records of his work, and Phillips had to transcribe what he could find from papers and documents borrowed from the Resident Commissioner's office and the Deputy for the Natives. Particulars of the native claims were vague. 'Many non-native defendants had never been notified in any way that native claims against their holdings had been submitted. The representatives of the natives and non-native parties had no proper idea of what was required of them at the Inquiries'.¹⁴⁵ To remedy this situation, Phillips quickly moved to have 'general Notices of the Claims

¹⁴¹ High Commissioner for the Western Pacific to the Governor General, Australia, 16 September 1920; and High Commissioner to Resident Commission, Solomon Islands, 16 September 1920, both in UASC, WPHC 4IV AU Microfilm 79-221, 1999/1920.

¹⁴² Acting Resident Commissioner to High Commissioner for the Western Pacific, 25 November 1920. UASC, WPHC 4IV AU Microfilm 79-221, 1999/1920.

¹⁴³ Gazette Notice No. 124, Appointment of F Beaumont Phillips, 16 November 1920; see also High Commissioner to the Secretary of State for the Colonies, 19 November 1920 both in UASC, WPHC 4/IV AU Microfilm 79-221, 1999/1920.

¹⁴⁴ R. R. Garran, Secretary Commonwealth of Australia, Attorney General's Department, Melbourne to F. Beaumont Phillips, 22 September 1920. UASC, WPHC 4IV AU Microfilm 79-221, 1999/1920.

¹⁴⁵ Lands Commissioner, Frederick Beaumont Phillips to High Commissioner for the Western Pacific, 1 July 1924. UASC, WPHC 4/IV, WPHC MP No. 1129/1924.

before the Commission to be published in newspapers circulating throughout the Pacific, and also gave notice, by letter, to all non-natives whom [he] thought might be concerned'.¹⁴⁶ A reputation for efficiency gained while in the army¹⁴⁷ was already in evidence.

4.6 Alexander's decisions

Alexander's term as Lands Commissioner lasted just 8 months and 5 days, of which he spent 3 months and 20 days in the Protectorate, and 4 months and 15 days outside.¹⁴⁸ During this period, he was presented with 29 land claims of which he heard:

2 claims and made recommendations (nos. 22 and 24); heard 2 claims and arranged by negotiation (nos. 19 and 29); 1 claim not heard but claim admitted by company (no. 18); 20 claims not heard but recommended for negotiation (nos. 1 to 17, 20, 21 and 23); and 4 claims not dealt with (nos. 25 to 28).¹⁴⁹

His recommendations, discussed in some detail below, demonstrate that Alexander was concerned largely with facilitating land settlements, often with little consideration given to the history of interactions between actors and networks in land transactions. I consider the case of four land claims dealt with by Alexander in order to understand how his interest and experience were translated through the Lands Commission, which could be perceived in Latourian terms as a laboratory for developing land solutions; if people had land problems, they had to process them through this laboratory.

¹⁴⁶ Lands Commissioner's Report on Native Claim No. 41 (relates to land at Wanderer Bay), 15 August 1924. UASC, WPHC 4/IV, WPHC MP No. 79-264, 2067/1924.

¹⁴⁷ Quinlivan, P.J. (1988). 'Phillips, Sir Frederick Beaumont.' Australian Dictionary of Biography, National Centre of Biography, Australian National University. Online <http://adb.anu.edu.au/biography/phillips-sir-frederick-beaumont-8034> (Accessed 20/12/2015).

¹⁴⁸ Lands Commission: Summary of Work Done, 22 September 1920. UASC, WPHC 4/IV AU Microfilm 79-221, 1999/1920.

¹⁴⁹ Lands Commission: Summary of Work Done to 22 September 1920.

Alexander's judicial experience shaped the manner in which he made decisions and recommendations during his era as Lands Commissioner, revealed an approach that favoured swift decisions and encouraged land alienation – described by Ian Heath as 'very slipshod'.¹⁵⁰ While such a description might seem accurate, it fails to account for Alexander's decisions in terms of his background and experience. Alexander appeared to favour the quick settlement of claims made by Solomon Islanders against Europeans and the Government, opting for an amicable manner with little formal investigation in order to complete the work on time and at minimal cost. He was more used to sitting on the bench and listening to submissions than making rulings based on his own investigations, and this experience fundamentally guided his approach as Lands Commissioner.

Regarding the sixteen Solomon Islander land claims against the Malayta Company on Malaita, Alexander 'made no reference to the validity of the Native Claims – every Claim was accepted on value' – and neither did he investigate the company's title. He encouraged claimants to accept compensation 'in exchange for withdrawing their claims'.¹⁵¹ He proposed the compensation amounts agreed upon by the Solomon Islander claimants and then travelled to Sydney where he met with the Malayta Company and others. When these investors announced that they considered the compensation amounts too high, Alexander arbitrarily lowered them. Where no agreement could be reached on the scale of compensation, Alexander encouraged investors to enter into direct negotiation with the Solomon Islander

¹⁵⁰ Heath, *Land Policy in Solomon Islands*, 163.

¹⁵¹ Heath, *Land Policy in Solomon Islands*, 164.

claimants.¹⁵² It appears that Alexander was inclined to promote the settlement of these claims against private property based on existing boundaries rather than consider the return of alienated land to Solomon Islander claimants because he was keen to promote plantation investment in BSIP. Although his previous employment in Fiji must have exposed him to the structural approach used there to deal with land issues, he opted for a transactional approach as a means of processing land claims more quickly.

My first case study concerns claim no. 17, which had to do with alienated land situated at Matanikau on a land area identified as Lunga, Kookoom (Kukum) on the island of Guadalcanal. This land was sold by Uvothea chief of Lunga, Allea chief of Nanago, and Manungo son of Allea to traders Garvin Kelly, John Williams, and Thomas Woodhouse for £60 of trade goods. According to the original land deed of 1886 the total land area purchased was ‘all that piece of land on the north coast of Guadalcanal, one of the islands called Moree and Nanago extending from ... Lunga Bay westerly to a point in Le Crux Bay called Bah, from Bah Point S.S.W to the main range, from thence Easterly to meet a line S.W from grass patch in Langa Bay’.¹⁵³ This account of the acquired land describes a linear boundary from Point Cruz to Tenaru, referred to as the Kukum land. The traders then sold the land in 1898 to Karl Oscar Svensen’s and his business partner, Alex J. Rabut (or Rabuth).¹⁵⁴ Svensen

¹⁵² Claim No. 17 Matanikau, Kookoom, 9 August 1920. UASC, WHPC MP No.450-1922. Copy also available at SINA, BSIP 18/I/2.

¹⁵³ Claim No. 17, Matanikau, Kookoom, 9 August 1920.

¹⁵⁴ Golden, G.A. (1993). *The Early European Settlers of the Solomon Islands*. Melbourne, G. Golden, 203.

subsequently sold the land to Lever's Pacific Plantations Pty. Ltd, which was then issued a Certificate of Occupation for 99 years by the state in 1903.¹⁵⁵

The Kukum land transaction of 1886 happened in a context outside the colonial frontier where there were no formal property arrangements. However, the sale of this same land to Svensen and then to Levers took place within the frontier because it happened after Solomon Islands was established as a protectorate in 1893 and the land law was enacted in 1896. As a result, the land was transformed into property that provided the basis for Svensen and subsequently Levers to assert their rights over the land by excluding the customary landowners.

Sualu, who was considered chief of the Gaobata line and of Matanikau, reported to the Lands Commission that Svensen and Rabuth had cleared people off the land and that they had moved to Kakabona.¹⁵⁶ He also claimed that Levers P.P. Ltd had cleared 200 acres that did not belong to them. The land bought by Kelly, Williams and Woodhouse in 1886 was land east of Tanakaki that belonged to the Simbo line and the vendors were living at Selisai. 'The Gaobata line owns the land west of Tanakaki, and has not disposed of it, and does not wish to, with the exception of the piece cleared by Levers'.¹⁵⁷ The Islanders did not provide any description of the land boundaries except to point out the land area over which they claimed customary land rights.

¹⁵⁵ Certificate of Occupation for 99 Years granted to Pacific Islands Company (1902) Limited in 1903. SINA, BSIP 18/I/7, A.

¹⁵⁶ Claim No. 17, Matanikau, Kookoom, 9 August 1920; also see Golden 1993, 133.

¹⁵⁷ Claim No. 17, Matanikau, Kookoom, 9 August 1920.

Although Alexander decided that the Solomon Islander claimants had a *prima facie* claim, this was based on his discussion with the claimants rather than any sound investigation or inspection of the land in question. Instead, during his time in Sydney, he met with Levers and suggested that they undertake an on-the-spot settlement with the claimants. The company concurred and sent its representative J. Symington to accompany District Officer R. Brodhurst to a meeting with the Islander claimants at Kukum in June 1920. The claimants agreed to withdraw their claim if they were compensated to the value of £50 but the company representative offered £25 instead. The claimants were pressured to accept the counter offer although they were dissatisfied with the amount. Their decision was influenced by the District Officer, who told them to agree to a settlement, telling them that if the Lands Commission heard the dispute, the claimants risked losing everything.¹⁵⁸ This suggests that the Solomon Islander claimants opted for settlement because they were influenced by the perception that they stood a better chance to receive compensation via settlement rather than via a lands commission hearing. The claimants informed Alexander of their dissatisfaction with the compensation amount when he visited and interviewed them two months later. He suggested to Levers that they increase their offer to £50, which the company then paid, settling the claim.

My second case study is land claim no. 19, which relates to Lever's Certificate of Occupation License dated 6 August 1907 for a freehold estate of 999 years over approximately 10,000 acres, 'on the coastline of the Island of Pavuvu and some adjoining small islands in the

¹⁵⁸ Hill to Resident Commissioner, 10 June 1920. BSIP 18/1/2 cited in Heath, Land Policy in Solomon Islands.

Russell Group'.¹⁵⁹ The Islander claimants in this case were Mandika, Kapu, Toku, Komi, and Vangaveli, and the issue to be determined was ownership of the land because the land that was the subject of the Certificate of Occupation License was 'dealt with as waste land under' The Solomons (Waste Lands) Regulation.¹⁶⁰ . In this instance, Alexander provided a space for the Islander claimants and Mr. Fulton, the General Manager of Levers, to narrate their connections to the land in question as evidence for the legitimacy of their claim.

Mandika, in his narrative, traced where he had lived and explained that he had made gardens on West Bay prior to European arrival. His mother was from the Kirwa line and the land areas from 'West Bay and Somata, Bola, Lekembi, and Paloka belong to this line'.¹⁶¹ He claimed that only himself and one other living person were the survivors of this 'line'. Kapu, in his statement pointed out his mother's name, his garden on one of the islands and much of the land from Fiami to Kokolan along the coast as belonging to his Kaisling line. He stated that the boundary of the Fiami land described as "spearline" was a line that had been marked by 'Captain Fred' (Erickson).¹⁶² When appearing before the Lands Commission, Fulton, the general manager of Levers, did not oppose the claims made by Mandika and Kapu. Instead, he stated that he had never 'lived on the land from Fiami to Kokolan or made gardens there'.¹⁶³ Other individual claimants who also appeared before the Lands Commission supported the claims of Mandika and Kapu. Alexander deemed the evidence sufficient to

¹⁵⁹ Claim No. 19 Russell Islands, 9 August 1920. UASC, WHPC MP No. 452-1922.

¹⁶⁰ Claim No. 19 Russell Islands, 9 August 1920.

¹⁶¹ Claim No. 19 Russell Islands, 9 August 1920.

¹⁶² Claim No. 19 Russell Islands, 9 August 1920.

¹⁶³ Claim No. 19 Russell Islands, 9 August 1920.

conclude that the land described in the Lever's Certificate of Occupation License was not waste land.

Alexander argued that, as far as he could ascertain, there had been no official investigation prior to the granting of the Certificate of Occupation license to Levers to determine the ownership status of the land, which had simply been declared waste land by virtue of the Solomons Waste Land Regulations. Alexander concluded that he was convinced that at the time the land was acquired as waste land it was 'in fact occupied by certain natives, in part it was cultivated to a slight extent, and as to the whole it was owned by natives'.¹⁶⁴ Therefore, he suggested that a moral obligation rested upon the BSIP government to address the injustices as a result of land alienation without payment and obtaining of consent from landowners, and 'on the other hand the inequity to Lever's Pacific Plantations Limited of leaving them with a defective title as a result of the action or inaction of the Government'.¹⁶⁵

As a recommended remedy, Levers surrendered the Certificate of Occupation for cancellation and the islands identified in the certificate were given back to the claimants of "line" Kirwa and Kaisling. The BSIP would then purchase this land from the claimants for £500 and Levers would be responsible for meeting the survey costs of this land, after which the BSIP would lease the land to Levers. This case study demonstrates how Alexander tried to facilitate a settlement between the parties but at the same time encouraged investment through the leasing of the land back to Levers. It shows how his role as Lands Commissioner

¹⁶⁴ Claim No. 19 Russell Islands, 9 August 1920.

¹⁶⁵ Claim No. 19 Russell Islands, 9 August 1920.

was that of an intermediary, trying to encourage the parties to come to a compromise and then allowing the land under dispute to be commoditised as property and leased.

4.7 Phillips' decisions

Phillips' role as Lands Commissioner commenced with the completion of his predecessor's unfinished cases. He reviewed the sixteen Solomon Islander claims against the Malayta Company, ascertaining whether the claimants accepted Alexander's findings and decisions. He found that the majority of Alexander's recommendations were accepted in principle and could be affirmed if, 'after supervising the marking of boundaries, no further disputes arose'.¹⁶⁶ Phillips followed Alexander's style of negotiating settlements in seven of the sixteen land claims but avoided conducting separate interviews because it would be too time-consuming given the geographical location of the claims. Instead he would carefully determine the rights of the claimants and the description of boundaries as outlined in the deed of conveyance before negotiating a settlement. This suggests that, in contrast to Alexander, whose focus had been on negotiating a settlement between disputing parties, Phillips was more concerned to determine the rights and boundaries of the land under dispute.

As noted by Ian Heath, 'In five cases, where new claimants came forward when back boundaries were being marked, settlements were easily reached. Another case concerned the Company's encroachment on a 'native reserved' and was easily adjudicated'.¹⁶⁷ Of the sixteen claims, Phillips was obliged to conduct a lengthy inquiry only for Claim No. 3a. This claim concerned a conveyance to Alexander McKeller in 1908, later leased to the Malayta

¹⁶⁶ Heath, *Land Policy in Solomon Islands*, 170.

¹⁶⁷ Heath, *Land Policy in Solomon Islands*, 170.

Company with very vague boundaries. This land was conveyed by Bodemai and Foanufu who were acknowledged by various witnesses as owners, but their sons disputed this and claimed the land now belonged to them. The principal claimant was Sam Etakwao, the son of Foanufu. Phillips acknowledged that while claims made by the sons demonstrated a ‘semi-conscious expression of dissatisfaction of descendants’¹⁶⁸ who found out that their expected interest to communal land had been alienated by their parents, there was no evidence contesting the right of the vendors to dispose of the land for value consideration to a stranger. As a result, Phillips dismissed this claim. Considering claims against the Malayta Company as whole, it was apparent that Phillips was inclined not to reopen each of the sixteen claims and that he was mindful of his role as successor to Alexander.

Phillips’ conduct of the commission is best understood by examining his decisions and recommendations for a selection of case studies. But, as Rebecca Monson observes, Phillips’ commission was ‘complicated by the work of the Reverend John Francis Goldie’, who was an influential figure in the Methodist mission in Western Solomons.¹⁶⁹ Two points of contention emerged between them: the first was the request by Goldie to Phillips to defer the consideration of certain land claims until he could return from Australia; second was the assertion by Goldie that Islander claimants wanted him to represent them in the lands commission inquiries.¹⁷⁰ Phillips’ exposure to the Methodist network in Melbourne positioned him well to handle any pressure from Goldie, and he recommended that a person

¹⁶⁸ Heath, *Land Policy in Solomon Islands*, 171.

¹⁶⁹ Monson, *Hu Nao Save Tok?*, 132.

¹⁷⁰ J.F. Goldie to the Lands Commissioner, 6 January 1921; see also J.F. Goldie to the Lands Commissioner, 14 February 1921; both letters enclosed in UASC, WPHC 4/IV 1922, AU Microfilm 79-235.

should be appointed to represent the Methodist Society while Goldie was away because 'postponement would involve an interruption, possibly a suspension, of work by the Lands Commission that would be entirely unwarranted'.¹⁷¹

Phillips also disagreed with Goldie's suggestion that he represent the claimants, because the High Commissioner had already appointed Mr. Knibbs as the Deputy for the Natives to appear and act on behalf of the claimants.¹⁷² Goldie's response, in a letter to the Lands Commissioner, was that the claimants were under the impression that 'a man who has devoted nearly twenty years to their interests has something to contribute towards such a satisfactory settlement',¹⁷³ and that his presence was strongly desired. He further stated that if someone (other than him) were to be 'forced on them without assistance of any kind, they will not be satisfied, and the work of the Lands Commission will be hampered and a satisfactory settlement delayed'.¹⁷⁴

Not surprisingly, Phillips suspected the influence of Goldie when he received a petition sent by the chiefs and landowners of the Western Solomons in March 1921. The petitioners requested that:

...the head of our church, Mr. Goldie, should be allowed to accompany (represent) us and help us to arrive at a settlement. He has been with us for twenty years, and we cannot trust another man (as we trust him). All of us – Christian and heathen alike – of Roviana (New Georgia), Vella Lavella, and Choiseul have the same desire.¹⁷⁵

¹⁷¹ F.B. Phillips, Lands Commissioner to J.F. Goldie, 9 February 1921.

¹⁷² F.B. Phillips, Lands Commissioner to J.F. Goldie, 9 February 1921.

¹⁷³ J.F. Goldie to the Lands Commissioner, 14 February 1921.

¹⁷⁴ J.F. Goldie to the Lands Commissioner, 14 February 1921.

¹⁷⁵ Petition, March 1921. UASC, WPHC 4/IV 1922, AU Microfilm 79-235.

While Goldie denied involvement, he does appear to have played a role in framing this petition because '[t]he contents and phraseology of the ... Petition' were similar to those of Goldie's letter to the Lands Commissioner of 14 February 1921.¹⁷⁶ Goldie strongly supported the petition and urged that the Lands Commission allow him to represent the chiefs and landowners but Phillips continued to maintain that this was not permissible because of existing legal provisions.

Goldie interpreted the unfavourable response from the Lands Commissioner as 'inspired by a bias ...unconsciously acquired by' the Lands Commissioner being 'surrounded by an atmosphere of Tulagi officialdom antagonistic to himself'.¹⁷⁷ Tulagi was an island acquired by Woodford in 1896 for the establishment of the colonial administration, and the BSIP was administered and run from Tulagi. Phillips reminded Goldie that he was mistaken in this view because his appointment as Lands Commissioner was made 'from outside the Protectorate Service and particularly desired to be in no way involved in any local friction whatsoever'.¹⁷⁸ An interview between Goldie and Phillips was held in Melbourne in August 1921 to reach an amicable working arrangement for Solomon Islander representation. Phillips proposed that Goldie 'associate himself with the Deputy for the Natives ... and that, at the Inquiry he should assist the deputy'.¹⁷⁹ Goldie refused to accept these proposals, preferring a status similar to that of Deputy if he was going to represent the chiefs and landowners.

¹⁷⁶ Memorandum: The Lands Commissioner to the Acting Resident Commissioner, 10 December 1921. UASC, WPHC 4/IV 1922, AU Microfilm 79-235.

¹⁷⁷ Memorandum: The Lands Commissioner to the Acting Resident Commissioner, 10 December 1921.

¹⁷⁸ Memorandum: The Lands Commissioner to the Acting Resident Commissioner, 10 December 1921.

¹⁷⁹ Memorandum: The Lands Commissioner to the Acting Resident Commissioner, 10 December 1921.

The difference in opinion following the Melbourne meeting provoked the November Petition submitted by the Islanders to the Secretary of State for the Colonies. The Islanders' petition emphasised the desire to have Goldie represent them because he could speak their language and had knowledge of their custom and land tenure.¹⁸⁰ The way this petition was framed recognises the importance of choice of language in explaining the processes of negotiation and representation to determine ownership rights. But despite such clear importance, Goldie and others who had some knowledge of the language and customs of the claimants were only allowed to give evidence in the proceedings of the Lands Commission rather than being promoted to the status of Deputy of the Native appointed by the colonial administration to represent the Solomon Islander claimants.¹⁸¹

Phillips emphasised that the 'Inquiries of the Commission are concerned to a great degree with native customs and tenure, and aim at substantial justice rather than legal technicalities'.¹⁸² This is revealing of Phillips' quasi-judicial approach to his work on the Commission. While the Commission offered only minimal redress or compensation for past loss, and effectively confirmed the process of land conversion under the Waste Land Regulation and other mechanisms, it did serve to bring together within a single framework of negotiation: the customary landowners, the investors and the colonial authorities. This approach can be described as a structural approach because Phillips paid attention to Islander custom and tenure, examined evidence in support of the claims, and checked the boundaries

¹⁸⁰ Petition. UASC, WPHC 4/IV 1922, AU Microfilm 79-235.

¹⁸¹ Monson, Hu Nao Save Tok? 134.

¹⁸² Memorandum: The Lands Commission to the Acting Resident Commissioner, 10 December 1921.

of the land subject to the claim before ascertaining whether Islander property rights inside the colonial frontier should be supported or dismissed.

A case in point was Native Claim No. 28 (listed as 28a, 28b, 28c and 28d), which concerned four titles on Ugi Island held by Levers. The trader John Stephens had been the original purchaser of the lands in question, which were assumed by Woodford, Levers and Knibbs to comprise ‘a ten mile continuous coastal frontage starting at Selwyn Bay on the west coast and going round the north coast to the east coast’.¹⁸³ During Alexander’s time as Lands Commissioner he visited Ugi Island in 1920 and discovered that the claimants had been offered compensation if they withdrew their claims against Levers but had rejected this option.¹⁸⁴ In January 1921, Phillips ‘began his investigation ... to clear up the confusions over the boundaries as described in the Stephens deeds’.¹⁸⁵ With the assistance of a surveyor, he traced the land boundaries by relocating the landmarks referred to in the deeds. Based on this work Phillips formed the view that the coastal frontage described in the deeds was only four miles in length, separated in two parcels, one on the east coast and one on the west coast.¹⁸⁶ He also marked out the boundaries of the fifth Stephens deed, against which a Native Claim had been lodged (listed as Claim 54).

¹⁸³ Heath, *Land Policy in Solomon Islands*, 174.

¹⁸⁴ Heath, *Land Policy in Solomon Islands*, 173.

¹⁸⁵ Heath, *Land Policy in Solomon Islands*, 173.

¹⁸⁶ Report on Native Claim Nos. 28 and 54 (Ugi Island), 7 July 1924, BSIP 18/1/13 cited in Heath, *Land Policy in Solomon Islands*, 174.

Phillips heard the evidence in support of the land claims, which indicated much confusion, fraud and misunderstanding as a consequence of the land dealings. He decided that only the original deed to the land around Selwyn Bay was valid, and Native Claim 54 was thus dismissed while he supported the other four claims.¹⁸⁷ His view of Claim 54 as involving a valid conveyance ‘seemed to be based largely on the fact that European occupation had been previously unchallenged’.¹⁸⁸ This interpretation was questioned because there was a history of incidents in which Islanders had acted violently towards Levers and its labourers, some of whom had retaliated; a history that was clearly linked to the land disputes.¹⁸⁹ Phillips’ decisions regarding these claims shows evidence of a structural approach but also suggests that he was ‘reluctant, like Alexander, to disturb a European company that was in occupation of the land in dispute’.¹⁹⁰

Finally, the Lands Commission also examined customary land tenure practices and usage when dealing with claims against the lands alienated under The Solomons (Waste Lands) Regulation 1904. This was mainly in relation to Claims 30-37 and 55 in the Western Solomons. These claims concerned L.P.P.L lands held under Certificates of Occupation, which covered the ‘largest area of land under dispute and they were the longest and most bitterly contested cases’.¹⁹¹ This area of land was classified as waste land in accordance with the legal meaning of the word as provided for under section 2 of The Solomons (Waste

¹⁸⁷ Report on Native Claim Nos. 28 and 54 (Ugi Island), 7 July 1924, BSIP 18/1/13.

¹⁸⁸ Report on Native Claim Nos. 28 and 54 (Ugi Island), 7 July 1924, BSIP 18/1/13.

¹⁸⁹ Heath, *Land Policy in Solomon Islands*, 174-175.

¹⁹⁰ Heath, *Land Policy in Solomon Islands*, 176.

¹⁹¹ Heath, *Land Policy in Solomon Islands*, 189.

Lands) Regulation 1904, which meant land that was unowned, uncultivated or unoccupied while customary land use and practice ignored. To ascertain whether the area of land was unowned, uncultivated or unoccupied, Phillips had to rely on ‘physical evidence on the group and oral evidence of the claimants that could clarify the extent of occupation’.¹⁹² On the basis of this context and his understanding of customary land tenure, Phillips would then make a determination on the claims against the lands alienated under The Solomons (Waste Lands) Regulation 1904. Inevitably, Phillips drew on his conceptual frame on property rights, matrilineal and patrilineal systems, and communal and individual tenure arrangements to define European attitudes towards Solomon Islander claimants on the issue of land ownership.

4.8 Phillips Commission Legacy

Phillips dealt with a total of fifty-five land claims out of about three hundred during his time as the Lands Commissioner. Eleven of these claims were to lands alienated prior to 1896, while twenty-eight were to land alienated under the Solomons (Land) Regulation 1896, ten under the Waste Land Regulation 1904 and six under the Solomons (Lands) Regulation 1914. Most of the Islander claims regarding land alienated before 1896 were located in the eastern Solomons (Ugi, Santa Anna, Makira and Vanikoro), except for two claims on Guadalcanal and one on Ontong Java.¹⁹³ Half of the fifty-five land claims concerned land alienation in accordance with Regulation 1896. The majority of these claims concerned land held by the Malayta Company. Other claims that Phillips dealt with related to land held by Levers Pacific

¹⁹² Heath, *Land Policy in Solomon Islands*, 192.

¹⁹³ Heath, I.C. (1981). *Land Policy in Solomon Islands*. La Trobe University, PhD Thesis, 180.

Plantation Limited (L.P.P.L) under Certificates of Occupation by virtue of the Waste Land Regulation 1904. These certificates issued to L.P.P.L covered ‘Kolombangara, parts of New Georgia and Isabel, and the Tenaru area of Guadalcanal’.¹⁹⁴ Few of the other claims that the Lands Commission investigated concerned land alienated under the 1914 Regulation.

The hearings by Phillips were done at the site of each land dispute. This included careful surveying of the land boundaries and determining whether claimants had a right to the disputed land, before the land settlement could be negotiated. The work of the Lands Commission resulted in the return of ‘508 of the 1012 square kilometres of alienated’¹⁹⁵ land to customary landowner claimants because the land boundaries were defective, land covered under the Certificates of Occupation was proved not to be waste or vacant land or forfeiture from breach.¹⁹⁶ In this way Phillips was able to use the Lands Commission as a laboratory through which to conduct hearings that provided the platform for negotiating land settlement.

Although large tracts of land were returned, most of them were underdeveloped. Landowners joined forces despite their differences to strengthen their claims against the ‘waste land’ alienation. While some disliked this method of collective action it was common throughout the Lands Commission’s investigation on the Western Solomons Claims.¹⁹⁷ Phillips regarded

¹⁹⁴ Ruthven, D. (1979). ‘Land Legislation from the Protectorate to Independence.’ In Larmour, P. (ed), *Land in Solomon Islands*. Fiji, Institute of Pacific Studies, USP and Ministry of Agriculture Lands, 239-248, 244.

¹⁹⁵ Bennett, J.A. (2000). *Pacific Forest: A History of Resource Control and Contest in Solomon Islands*, c. 1800-1997. Cambridge, The White House Press, 164.

¹⁹⁶ Ruthven, D. (1979). ‘Land Legislation from the Protectorate to Independence.’ In Larmour, P. (ed), *Land in Solomon Islands*. Fiji, Institute of Pacific Studies, USP and Ministry of Agriculture Lands, 239-248, 245.

¹⁹⁷ Lands Commissioner’s Report for Native Claims 30-37 and 55, 21 April 1925, 55-56. BSIP 18/1/26; for detailed discussion on the collective method used by landowners to assert their claims against ‘waste land’ alienation see Heath, Land Policy in Solomon Islands.

this approach as indicating the ‘breakdown of custom in the area and thus was counter-productive for the Solomon Islanders cause’.¹⁹⁸ But it suggests, as Heath observes, that landowners were prepared to abandon aspects of their social system in order to stop Europeans alienating their land, cooperating in larger groups as a means to strengthen their case by increasing the number of claimants.¹⁹⁹ In this unintended way, the Lands Commission contributed to shaping how Solomon Islanders articulated and asserted their rights to alienated and customary land.

In dealing with the claims against ‘waste land’ alienation, mainly in the Western Solomons, Phillips held that such land was communal in nature. He quoted W.H.R. Rivers to support his view, stating that ‘definite communism of property still flourishes in one form or another throughout Melanesia’.²⁰⁰ Another individual who influenced Phillips’ view on customary land tenure was Lorimer Fison, who had left England for the Australian goldfields and then studied at Melbourne University, after which he became a Wesleyan missionary and moved to Fiji.²⁰¹ In discussing customary tenure in Solomon Islands as communal in nature, Phillips drew on Fison’s model of land tenure in Fiji.²⁰² Concepts adopted from Fison, such as primary

¹⁹⁸ Heath, Land Policy in Solomon Islands, 204.

¹⁹⁹ Heath, Land Policy in Solomon Islands, 204.

²⁰⁰ Rivers, W.H.R. (1968). *The History of Melanesian Society*, Volume 2. Oosterhout, The Netherlands, Anthropological Publications, 146 referred to in the Lands Commissioner’s Report for Native Claims 30-37 and 55, 21 April 1925, 49. BSIP 18/1/26.

²⁰¹ Stanner, W.E.H. (1972). Fison, Lorimer (1832-1907). Australian Dictionary of Biography. National Centre of Biography, Australian National University. Online, <http://adb.anu.edu.au/biography/fison-lorimer-3523> (Accessed 22 March 2018); see also Frazer, J.G. (1909). ‘Howitt and Fison.’ *Folklore*, 20(2): 144-180.

²⁰² Phillips to the High Commissioner, 21 April 1921, BSIP/III/2; see also Heath, Land Policy in Solomon Islands, 193; For Fison’s writing on land tenure see: Fison, L. (1881). ‘Land Tenure in Fiji.’ *The Journal of the Anthropological Institute of Great Britain and Ireland*, 10: 332-352; Fison, L. (1885). ‘The Nanga, or Sacred Stone Enclosure, of Wainimala, Fiji.’ *The Journal of the Anthropological Institute of Great Britain and Ireland*, 14: 14-31; Fison, L. (1895). ‘The Classificatory System of Relationship.’ *The Journal of the Anthropological*

and secondary rights, appeared in Phillips' discussion of land tenure from around 1921, marking their introduction to Solomon Islands land tenure discourse.²⁰³ By the 1950s, this vocabulary had become part of land tenure discourse in Solomon Islands, appearing in the report of the Allan Commission (see Chapter 5).

In addition, Phillips also formed the view that the matrilineal system once dominant in the Western Solomons was undergoing rapid change to a patrilineal system, except on Vella Lavella where local social structure was considered to be still in its pure form.²⁰⁴ This view was by no means unique but rather reflected prevailing theories about the unilineal evolution of societies, which had been articulated in a Pacific context by individuals such as Fison to explain changes in Fijian society.²⁰⁵ I concur with Heath, who argues that Phillips must have been influenced by Fison's strict interpretation of the unilineal evolution of societies.²⁰⁶ Phillips' views on the nature of customary land became central to administrative understandings of land tenure systems, and would be referred to by the Allan Commission (see Chapter 5). As highlighted by Heath, the Lands Commission 'became a primary (but not

Institute of Great Britain and Ireland, 24: 360-371; see also Howitt, A.W and Fison, L. (1885). 'On the Deme and the Horde.' *The Journal of the Anthropological Institute of Great Britain and Ireland*, 14: 141-169.

²⁰³ For analysis of the role of primary and secondary rights in discussion on land tenure in the Western Solomons see: Scales, I.A. (2003). *Landowners, Development Conflict and the State in Solomon Islands*. Australian National University, PhD thesis, 109-110.

²⁰⁴ Lands Commissioner's Report for Native Claims 30-37 and 55, 21 April 1925, 52-53. BSIP 18/1/26.

²⁰⁵ Fison, L. (1903). *Land Tenure in Fiji*. A Lecture delivered at Levuka when the Lands Commission was about to sit, Suva, Government Printer.

²⁰⁶ Heath, *Land Policy in Solomon Islands*, 193; for discussion on Fison's views on unilineal evolution of societies see: France, P. (1969). *The Charter of the Land. Custom and Colonization in Fiji*. Melbourne, Melbourne University Press; see also Fortes, M. (1953). 'The Structure of Unilineal Descent Groups'. *American Anthropologist*, 55(1): 17-41.

the only) source of European attitudes on these matters – and these attitudes shaped land policy and land administration for the next fifty years'.²⁰⁷

Phillips' work was systematic but it was restricted to land claims that had already been submitted to the Lands Commission and did not address new land claims made after 1919. Consequently, a large number of land claims concerning land alienated within and beyond the colonial frontier remained unresolved. The Lands Commission's decisions left many Solomon Islander landowners whose land had been alienated dissatisfied. For example, Alexander had heard Claim No. 5 and determined that the Malayta Company should pay the claimant Alick Kwaifiona two shillings per acre as compensation. Phillips reviewed this claim and affirmed Alexander's decision without any investigation. It was discovered by District Officer Bell that Kwaifiona did not agree with Alexander's decision. Phillips had failed to uncover such dissatisfaction in his confirmation of Alexander's decision.²⁰⁸ Although the Lands Commission made its decision based on methods that were more thorough than previous attempts, claimants such as Kwaifiona remained dissatisfied.

Furthermore, landowners objected to the Lands Commission's recommendations regarding the Levers 'waste land' alienation cases in the Western Solomons. The District Officer visited the areas that were subject of the claims and explained the recommendations to the people. However, he reported that the recommendations were 'unfavourably received and an

²⁰⁷ Heath, *Land Policy in Solomon Islands*, 152.

²⁰⁸ Bell to Resident Commissioner, 3 November 1922, BSIP 14/55 cited in Heath, *Land Policy in Solomon Islands*, 172.

undeniable bitter feeling' prevailed.²⁰⁹ Goldie was present during the meetings and he was requested by the High Commissioner to persuade the people concerned to accept the recommendations. However, the chiefs and landowners refused to accept the recommendations, and lodged a petition in November 1926 requesting the setting aside of the recommendations. The Resident Commissioner's view was that withdrawing the government's position on the recommendations would be considered as a weakness. The High Commissioner expressed similar views to the Secretary of State, who then confirmed the recommendations of the Lands Commission.²¹⁰ This brought the matter to a close, so far as the colonial administration was concerned, but there was a further petition in November 1928 and landowner resentment against land alienations remained unresolved.²¹¹

While Goldie was implicated in the framing of the petition, it was apparent that dissatisfaction with the Lands Commission's findings was genuine and widespread.²¹² As discussed by J.C Barley, the District Officer in the Western Solomon Islands, this dissatisfaction was associated with the development of a 'land sense' among the people. Such development was the result of 'the advance of education and enlightenment'.²¹³ Barley's view

²⁰⁹ District Officer Gizo to Government Secretary, 30 September 1926, WPHC 4, No. 3658 cited in Heath, Land Policy in Solomon Islands, 214.

²¹⁰ Heath, Land Policy in Solomon Islands, 217.

²¹¹ Chiefs to District Officer Gizo, 17 November 1928, enclosed in Resident Commissioner to High Commissioner, 3 January 1929, WPHC 4, No. 244 of 1929 cited in Heath, Land Policy in Solomon Islands, 217.

²¹² Heath, Land Policy in Solomon Islands, 215.

²¹³ Quarterly Report of the Gizo District, 17 October 1926, enclosed in Resident Commissioner to High Commissioner, 23 November 1926, WPHC 4, No. 3658 of 1926 cited in Heath, Land Policy in Solomon Islands, 216.

on ‘land sense’ resonated with Phillips’ discussion of a growing land consciousness. Phillips recalled that he had seen Solomon Islanders refuse the signing of a lease because of their fear that, once they signed the paper, they would lose their land forever.²¹⁴

The Lands Commission contributed further to this growing land consciousness. As discussed by Heath, the ‘boundary marking of European land claims, the revelation of L.P.P.L’s “waste land” alienations and the revelation of the existences of some other European land claims’ were factors that contributed to what Phillips described as ‘a growing land sense’.²¹⁵ This growth in ‘land sense’ continued throughout the 1920s-1940s, and contributed to shaping government narratives on land policy and the subsequent proposal to establish a special lands commission to address land issues, which I will discuss in chapter 5.

4.9 Conclusion

This chapter has focused in some detail on the contrasting approaches of Alexander and Phillips to the investigation and resolution of Islander land claims. Alexander dealt with a large number of claims to land that had been acquired by plantation companies operating from Sydney. He was quite prepared to acknowledge that there was considerable dissatisfaction over the ways in which these lands had been acquired, and over the precise definition of their boundaries. But his solution was to facilitate negotiations that would provide the landowners with just enough material or financial incentive to permit the land

²¹⁴ Lands Commissioner’s Report for Native Claims 30-37 and 55, 21 April 1925.

²¹⁵ Heath, *Land Policy in Solomon Islands*, 218.

leases to stand.²¹⁶ This transactional approach sought to preserve and affirm the status quo by bringing claimants and company representatives into negotiation.

Alexander justified his use of this approach on the grounds of the potential savings to the BSIP administration of a swift resolution of the Commission's brief.²¹⁷ His approach laid the foundations for formal recognition of the transformation of disputed alienated land into property right estates that planters or investors could lease. An influential and persuasive individual, he used his legal skills to mediate between the disputing parties to arrive at a settlement. But Alexander was not prepared to investigate individual cases in too much detail, or to arrive at decisions that ensured that justice had been done to all parties.

From the outset, Phillips demonstrated that he was much more interested in resolving the disputes through a structural approach which engaged all of the relevant actors, including missionaries, settlers, representatives of plantation companies and landowners. This involved the investigation of the sources of conflict: the identities of the vendors and their right to dispose of the land, the original transactions, and the details of the deeds, both on paper and on the ground. His goal was to produce a total solution that would preclude future dispute. But, as key actors in the Lands Commission, both Phillips and Alexander were in a critical position to transmit western ideas of property rights to facilitate commercial development. This was made possible through their interpretation of statements and evidence and their judgments on claims made by Solomon Islanders to land that had been alienated either outside or inside the colonial frontier.

²¹⁶ Alexander, *From the Middle Temple*, 257.

²¹⁷ Gilchrist G. Alexander to the Acting Chief Secretary, 31 May 19122. UASC, WPHC 4IV AU Microfilm 79-240; see also Alexander, *From the Middle Temple*.

CHAPTER 5: Sir Colin Allan and the Special Lands Commission, 1953-1957

5.1 Introduction

This chapter addresses the role in the history of Solomon Islands land reform of Sir Colin Hamilton Allan and the Special Lands Commission. The Special Lands Commission was the first major attempt to revisit land reform for the Protectorate after the Phillips Commission of the 1920s and, much as the work of the earlier Commission reflected the individual formation and interests of its two Commissioners, Alexander and Phillips, so too the Special Lands Commission or Allan Commission can only be understood in the context of Sir Colin Allan's individual history. In Latourian terms, the Special Lands Commission was the laboratory through which Allan translated the different interests and ideas that came together to shape the policy background for the state's attempts at land law reform from the late 1950s (see chapter 6). Various researchers make reference to the work of the Allan Commission and indicate that the land policy framework in Solomon Islands was influenced by precedents in Africa, in particular from Sudan and Kenya.¹ However, there has been little examination or analysis of Allan's prior experience, his particular skills and interests, or the role played by his networks and their impact upon his policy recommendations.

¹ Heath, I.C. (1981). Land Policy in Solomon Islands. Victoria, La Trobe University, PhD Thesis; Larmour, P. (1987). Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policymaking and Implementation Before and After Independence in Papua New Guinea, Solomon Islands and Vanuatu. Macquarie University, PhD Thesis; Larmour, P. (2002). 'Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.' *Public Administration and Development*, 22(2): 151-161; Tagini, P. (2001). 'The Effect of Land Policy on Foreign Direct Investments in the Solomon Islands.' *Journal of South Pacific Law*, 5: <<https://www.usp.ac.fj/index.php?id=13024>>.

I examine the central role of Allan in order to understand how the recommendations of his Commission were framed. I do this by investigating Allan's background, followed by an introduction to the rationale for the Special Lands Commission, the process of its establishment, and the way in which it worked and was reported. Tracing the influence on Allan's work for the Commission of his particular background and his use of ideas or knowledge from elsewhere allows for an exploration of the ways in which individual experience mediates insights gathered from across the British Empire.

5.2 The Commissioner

Sir Colin Hamilton Allan was born in 1921 in New Zealand, attended Cambridge Primary School in North Island and did his secondary education at Hamilton High School. He graduated with a Bachelor of Arts from Canterbury University College before embarking on a Masters degree in history and politics under the supervision of Sir James High, graduating in 1945. As part of this degree he engaged in some research on Maori land policy with a particular focus on the Middle Waikato Valley.² The insights from this early research were to be critical in forming Allan's conceptual frame around the narratives of dispossession and land alienation in New Zealand. Allan had served as a Naval Officer during World War II and later became a Lance-Corporal in the Army Education Service. He then joined the colonial service and was posted to the British Solomon Islands Protectorate as an administrative cadet officer.³ Following his appointment as an officer of the civilian administration, he served as District Officer at Nggela in 1945, Western Solomons in 1946,

² Allan, C.H. (1989). *Solomons Safari 1953-1958*. Christchurch, Nag's Head Press, 13.

³ Heath, Land Policy in Solomon Islands.

Ysabel and Choiseul in 1948. Allan became District Commissioner for Malaita from June 1950 until February 1952. During this period the Maasina Ruru movement was active and gained widespread influence on Malaita. Allan worked hard to end the influence of the movement by suppression.⁴ He left suddenly in 1952, possibly as the result of a nervous breakdown, and certainly with a deep hatred of Malaitans that finds expression in his reports. Most of Malaita was still in revolt, its people having defied his efforts to bring them to heel during his entire tenure. It was left to his successor Val Andersen and a new High Commissioner Robert Christopher Stafford Stanley,⁵ to bring about a tentative resolution of the long standoff. Allan was firmly opposed to allowing a Malaita Council until all Malaitans had yielded to the Government and given up Maasina Ruru, which they refused to do.

In 1952, the administration of the British Solomon Islands Protectorate was reorganised: '[t]he post of the High Commissioner for the Western Pacific was separated from that of the Governor of Fiji and the WPHC secretariat, together with all its staff and files, was transferred from Suva to Honiara'.⁶ Sir Robert Christopher Stanfford Stanley who served in Africa and directly as Chief Secretary of Northern Rhodesia, was appointed as first High Commissioner. Robert John Minnitt, previously of the Hong Kong naval volunteer force,

⁴ The Maasina Ruru Movement was established from 1946-1952. The majority of the movement's members were from Malaita. See Laracy, H. (ed) (1983). *Pacific Protest: The Maasina Rule Movement, Solomon Islands, 1944-1952*. Suva, Institute of Pacific Studies, USP; Akin, D.W. (2013). *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*. Honolulu, University of Hawai'i Press and the Centre for Pacific Islands Studies.

⁵ The position of Resident Commissioner that was held by Henry Graham Gregory-Smith from 1950 to 1 January 1953 was 'abolished and incorporated into that of the High Commissioner of the Western Pacific. [Gregory Smith's] successor was High Commissioner Robert Christopher Stafford Stanley': Moore, C. (2013). 'Gregory Smith, Henry Graham'. *Solomon Islands Historical Encyclopaedia 1893-1978*, Online, <http://www.solomonencyclopaedia.net/biogs/E000481b.htm> (Accessed 20/11/2017).

⁶ Allan, *Solomons Safari 1953-1958*, 8.

was appointed Chief Secretary. Alistair MacLeod Smith, previously Financial and Economic Adviser to the Windward Islands in the Caribbean, was appointed Financial Secretary.⁷ These colonial officers brought with them ideas and work experience from a range of colonies. This reshuffle was part of the transfer exercise foreshadowed under the seven-year rule established by Henry Harrison Vaskess, an Australian who had long been secretary to the WPHC, and contributed substantially to the cross-fertilization of ideas from across the empire.⁸

Allan should have been subject to this reshuffle process, but rather than posting him elsewhere, Minnitt, as the newly appointed Chief Secretary, approached him towards the end of 1952 to take up the post of Special Lands Commissioner. This appointment was based on the High Commissioner's recommendation and advice from the Colonial Office that preference was for an experienced administrative officer to be appointed.⁹ Allan was a suitable choice for the job, not only because of his experience in undertaking research on land issues in New Zealand but also due to his work as an administrative officer working in the British Solomon Islands since 1945. Perhaps Allan's background, experience and training ensured that the seven-year rule was not observed in his case. However, he was reluctant to take up the post initially because he knew land was a complex subject. Land was also low on the priority list of the WPHC hierarchy in terms of what needed to be done.¹⁰ But, as a

⁷ Allan, *Solomons Safari 1953-1958*, 8-9.

⁸ This seven-year rule stipulated that an officer could only work in the Western Pacific High Commission territories for up to seven years and should then be transferred to other British territories. The challenge to this seven-year rule was the fact that other British territories were not always keen to accept officers who had served their term working in the WPHC; Allan, *Solomons Safari 1953-1958*, 8-9.

⁹ Lands Commission in B.S.I.P Proposals for the Formation of CD & W Scheme. 1699. 1946-1954: University of Auckland Special Collections (hereinafter UASC), WPHC 9/II/48/32, Vol. II.

¹⁰ Allan, *Solomons Safari 1953-1958*, 12.

comparatively junior officer in the British Colonial Service, Allan eventually accepted the offer and was duly appointed as the Special Lands Commissioner.

During 1953 Allan studied social anthropology at Cambridge, and submitted a thesis on the Maasina Ruru Movement that operated on Malaita from 1942-1952 as an anti-colonial resistance group.¹¹ Among those who influenced him to pursue social anthropology at Cambridge was Reo Fortune who had been his supervisor.¹² Fortune was from New Zealand and had worked in the Pacific, particularly in Papua New Guinea. He had been married to Margaret Mead for five years, and together they formed part of a small group of anthropologists, all known to each other. This group included Raymond Firth and Douglas Oliver, who ‘pioneered modern field research in the insular South Pacific’ during the 1930s and 1940s.¹³ Firth, like Fortune, was from New Zealand and had conducted research on the Polynesian Outlier of Tikopia, at the southeastern extreme of the Solomon Islands. At some point, Allan appears to have come across the writings of the members of this network, which influenced him to attend the Devonshire Course at Cambridge University.¹⁴ The Devonshire Course was designed to train and equip students with added knowledge prior to taking up an appointment in the Colonial Services.¹⁵ The course exposed Allan to much of the scholarly

¹¹ On the Maasina Ruru Movement see Allan, C. (1951). “‘Marching Rule’: A Nativistic Cult of the British Solomon Islands.’ *Corona*, 3(3): 93-100; Laracy, *Pacific Protest*; Moore, C. (2007). ‘The Misappropriation of Malaitan Labour.’ *The Journal of Pacific History*, 42(2): 211-232; Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*.

¹² Allan, *Solomons Safari 1953-1958*, 12.

¹³ ‘H. Ian Hogbin 1904-1989’: Association for Social Anthropology in Oceania (ASAO) Website. Online < <http://www.soc.hawaii.edu/asao/pacific/honoraryf/hogbin.htm> > (Accessed 24/12/2016).

¹⁴ Akin, D. (2015). ‘Maasina Rule beyond Recognition’. *The Journal of Pacific History*, 50(4): 486-503, 491.

¹⁵ Kirk-Greene, A. ‘The Colonial Service Training Courses: Professionalising the Colonial Service’. Online < <http://www.britishempire.co.uk/article/colonialservicetrainingcourses.htm> > (Accessed 10/10/2016).

literature on land in Melanesia and elsewhere, such as Africa, grounding his thinking on Solomon Islanders and their landholding systems within a wider comparative framework.

5.3 Rationale for the Lands Commission

The post-war period witnessed a significant decline in the economies of British territories in the Pacific including BSIP because many companies found it challenging to reestablish their plantations due to the ‘destruction of practically all items of a capital nature’.¹⁶ The immediate priority for BSIP was to re-establish the civilian administration and, as Allan wrote later in his memoirs, to ‘...produce measures which would be economically rewarding for the Protectorate, thereby reducing the need for grant in aid and getting out of the clutches of the greatly feared Treasury in London’.¹⁷ Such an approach reinforced the long held desire on the part of the British government for its colonies to be self-supporting rather than heavily dependent on assistance from the Treasury through imperial grants.¹⁸ In British colonies in Africa the cultivation of commodities was promoted which resulted, for example, in mixed plantation and peasant production in Uganda and the subsidizing of the farming sector in

¹⁶ Belshaw, C. (April 21, 1948). ‘The Postwar Solomon Islands.’ *Far Eastern Survey*, 17(8): 95-98, 97; For a discussion regarding some of the changes due to the impacts of World War II see Coulter, J.W. (Jul., 1946). ‘Impact of the War on South Sea Islands.’ *Geographical Review*, 36(3): 409-419.

¹⁷ Allan, *Solomons Safari 1953-1958*, 11.

¹⁸ For example, in 1943, H. Vaskess, the Secretary to the Western Pacific High Commission, undertook a review of BSIP policies and came up with a number of sweeping recommendations. First, Vaskess recommended that a comprehensive scheme of peasant farming should be established as an alternative to European exploitation. Second, the government should reclaim plantation properties and alienated lands owned by foreigners for commercial purposes, then sub-divide the planted areas into suitable lots and reallocate them to individual natives or native communities to promote agricultural development. See Heath, *Land Policy in Solomon Islands*, 278-280.

Kenya.¹⁹ In BSIP, plantation agriculture was also encouraged but production remained limited.

The circumstances of the post-war period plunged the BSIP economy into a budget deficit which was met partly by the Colonial Development and Welfare Fund; BSIP was thus under pressure to rethink its financial policy as part of the post-war reconstruction of the colony's economy.²⁰ To kick start the reconstruction process, the BSIP administration extended its pre-war Agriculture Department to promote and facilitate large-scale rice growing on Guadalcanal. However, this scheme was not successful due to inadequate research.²¹ The post war reconstruction process was a challenge because of the weak economic situation of Solomon Islands, and the priorities of government which were focused more on rebuilding the administrative headquarters, maintaining order and improving social services.²² As a policy measure the government had to cut capital expenditure to a minimum and postponed its housing and research programs in order to finance current production.

In 1946, Resident Commissioner Owen Cyril Noel, who had worked previously as a District Commissioner in Uganda,²³ proposed the setting up of a lands commission. Noel was part of the flow of colonial officers from one colony to another. Informed by his previous colonial

¹⁹ Hood, A.J. (1997). *Developing the East African: The East Africa Royal Commission, 1953-1955, and Its Critics*. Rice University, PhD Thesis, 2.

²⁰ Belshaw, 'The Postwar Solomon Islands', 97.

²¹ Belshaw, 'The Postwar Solomon Islands'.

²² Belshaw, 'The Postwar Solomon Islands'; see also Bennett, J.A. (2002). 'Roots of Conflict in Solomon Islands - Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism.' *State Society and Governance in Melanesia Working Paper* No. 5. Canberra, ANU.

²³ The London Gazette. (1 January, 1942). *Supplement to the London Gazette*, 35399: 26. Online < <https://www.thegazette.co.uk/London/issue/35399/supplement/26/data.pdf> > (Accessed 1/19/2016).

experience, he suggested that the focus of the commission should be on the study of local land questions, the survey of land customs throughout the Protectorate and their codification as law.²⁴ Noel proposed that the existing land regulations should be amended. His proposal was based on a memorandum prepared by Alexander H. Wilson who, like Knibbs, had worked previously as an engineer with the Colonial Sugar Refining (CSR) Company in Fiji. Wilson had been appointed a government surveyor in 1924, and succeeded Knibbs as Lands Commissioner and acting Superintendent of Public Works in 1941.

Wilson's previous employment in Fiji and his extensive experience of pre-war land issues in Solomon Islands led him to suggest the Fiji lands commission model in his memorandum to Noel. He proposed that existing land regulations should be amended, particularly in relation to customary land, because he felt the attitude of Solomon Islanders 'towards land holding and its attendant customs has undergone at first gradual and latterly a more rapid appreciable change'.²⁵ According to Wilson such change in attitude towards land ownership and its associated custom was due to the 'impact of civilization in the form of Government, Missions, Planters and Traders'.²⁶ Such a view was shaped by the land consciousness theory of change in customary tenure promoted by the Philips Commission and most colonial administrators.

²⁴ Resident Commissioner to High Commissioner, 14 January 1946: Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954: UASC, WPHC 9/II/48/32, Vol I.

²⁵ A.H. Wilson to Resident Commissioner, 4 January 1946, BSIP F. A6/2 cited in Heath, Land Policy in Solomon Islands, 283.

²⁶ Resident Commissioner to High Commissioner, 14 January 1946: Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954.

What was perceived as land consciousness during this period was in fact a growing resentment and resistance on the part of Solomon Islanders to European demands for access to land for plantation development. The Solomon Islands economy revolved around the production and export of copra. From the 1920s-1942 economic growth was moderate. Murray Bathgate observes that '[i]n 1931 the world economic depression exposed the Protectorate's dependence on only one major commodity for export'.²⁷ The economic depression caused copra prices to drop and lease rentals went unpaid. Consequently, plantations were closed, resulting in the cancellation of native and crown leases.

In 1933 the Resident Commissioner lowered the export tax on copra, and in 1934 he halved the wages of Solomon Islander labourers to assist European planters to be able to maintain copra production. These relief measures were obviously intended to advance the welfare of European planters rather than Solomon Islanders. Solomon Islanders' sources of cash were reduced, and in order to purchase goods and pay tax,²⁸ they had either to work twice as long, or work for long hours but be paid less and thus purchase fewer goods. These experiences influenced many Solomon Islanders to perceive the circumstances as a European scheme to deceive them. Such a perception fed into how Solomon Islanders conceptualised land alienation, leading them to refuse to make their land available to Europeans. It also contributed to the 'growing dissatisfaction among Solomon Islanders with European administration'.²⁹

²⁷ Bathgate, M.A. (1993). *Fight for the Dollar: Economic and Social Change in Western Guadalcanal, Solomon Islands*. Solomon Islands Report Monograph No. 1. Wellington, Alexander Enterprise, 70.

²⁸ The Head Tax was introduced in 1922

²⁹ Heath, *Land Policy in Solomon Islands*, 229.

The WWII encounter with American soldiers, from 1942-1946, was another factor contributing to the awareness of land issues by Solomon Islanders. Bathgate describes the war as a shattering experience for Ndi-Nggai society. The people were frightened and confused by all the hostility, but many Solomon Islanders assisted the Americans either as scouts or labourers.³⁰ Others were selling crops and artefacts to the Americans which resulted in the improvement of their economic conditions. The Americans were perceived as friendly and generous. They listened to the grievances of Solomon Islanders about the pre-war situation and criticised the British Administration for failing to bring about economic progress. These interactions provided the impetus for the rise in economic and political aspirations of Solomon Islanders.³¹ When the Americans left in 1946, the British administration pursued post-war reconstruction of the national economy. Solomon Islanders showed an unwillingness to work in expatriate plantations, refused to make land available to Europeans, and demanded a higher wage and a greater political say.³² The colonial administration perceived the action of Solomon Islanders in terms of apathy and non-cooperation. I suggest, along with Heath, that these actions on the part of Solomon Islanders reflected a demand for progress, a determination not to allow land alienation, and a desire to avoid returning to the pre-war situation.³³

³⁰ Bathgate, *Fight for the Dollar*, 92.

³¹ Bathgate, *Fight for the Dollar*, 94; see also Scott, M. (2008). 'Proto-people and precedence: encompassing Euroamericans through narratives of 'first contact' in Solomon Islands.' In Stewart, P.J. and Strathern, A. (eds), *Exchange and Sacrifice*. Durham, NC, USA, Carolina Academic Press, 141-176.

³² Bathgate, *Fight for the Dollar*, 94.

³³ Bathgate, *Fight for the Dollar*, 94.

According to Heath, what both Noel and Wilson had in mind in addressing land issues was ‘only related to facilitating European access to the land’.³⁴ In other words, both were thinking that once certain basic land issues were resolved, the idea of land as property would prevail. The colonial administration expected that land matters would ‘take a prominent place in post-war development in the Protectorate’.³⁵ Under the BSIP Ten Year development plan there was provision for the spending of 32, 000 pounds on establishing a Lands Commission. An application was prepared in 1947 to access the funds under the Colonial Development and Welfare Act in order to establish the Lands Commission. The application made clear that existing customary land tenure arrangements had deficiencies that constituted an impediment to agriculture and economic development. This framing of customary land was not unique to Solomon Islands, but drew on a global flow of ideas to which colonial actors such as Noel and Wilson had access through their experiences working in other colonies.

Noel’s proposal suggested that the existing law relating to customary land was out of date and failed to provide guidance on important questions of ownership, tenure and inheritance.³⁶

The proposed work of the Lands Commission would involve:

- (a) The establishment of a sound basis of policy and practice in regard to the ownership tenure and use of land as a preliminary to the agriculture, forestry and mining development’; and (b) recording of local land boundaries.³⁷

³⁴ Heath, *Land Policy in Solomon Islands*, 284.

³⁵ Resident Commissioner to High Commissioner, 14 January 1946: *Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954*.

³⁶ *British Solomon Islands Lands Commission Grant of £Stg 7, 900, 1: UASC, WPHC 9/II/48/32, Vol II*.

³⁷ *Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954*.

The message propagated by this proposal was that customary tenure was the cause of underdevelopment. To address this issue would require transforming customary land under a property regime administered and protected by the state, and the first step in this process would be to create a Lands Commission to investigate and deal with land issues.

However, the proposal for a Lands Commission was delayed due to the prevailing political situation relating to the Maasina Ruru Movement, which was perceived as an anti-administration organisation with nationalistic goals.³⁸ George Digby Chamberlain, the Chief Secretary of the Western Pacific 1947-1952, played a crucial role in this decision to delay the commission. He had worked previously as a Colonial Secretary in Gold Coast (Ghana) before moving to the Western Pacific and served as Assistant High Commissioner. Chamberlain visited Solomon Islands in 1949 and expressed the idea that a Lands Commission was essential. However, for political reasons he was convinced to postpone its operation;³⁹ in his view, while the Maasina Ruru movement had been successfully dealt with, there was no doubt the undercurrent for political unrest would remain for several years.⁴⁰ During a Colonial Land Tenure Advisory Panel held on 5 July 1950 in Church House, Chamberlain made similar remarks to explain the delay in establishing the Lands Commission.⁴¹

³⁸ Heath, *Land Policy in Solomon Islands*, 282.

³⁹ Chamberlain to The Secretary of State for the Colonies, 6 May 1949: *Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954*.

⁴⁰ Chamberlain to The Secretary of State for the Colonies, 6 May 1949.

⁴¹ Minutes of the 11th Meeting of the Colonial Land Tenure Advisory Panel, 5 July 1950 in Church House: *Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954*.

As an interim measure, since the ‘Commission and the reform of the land legislation’ was considered ultimately essential’, it was intended that administrative officers should start ‘investigating into native land customs’ in their own districts and gathering ‘the information correlated by the Commissioners of Lands’.⁴² As a result, Dr. Charles Kingsley Meek, a member of the Panel, was asked to write a memorandum for the work and he provided a guide questionnaire to assist the administrative officers. Meek had been a British anthropologist and District Officer in Nigeria. He had published extensively on African land tenure and was considered a leading expert in the field.⁴³ Once again, experience in Africa was regarded as the critical element in determining the approach to land reform in Solomon Islands.

Once the political condition was considered sufficiently settled, the colonial administration pursued Noel’s proposal by applying in November 1951 for funding from the Colonial Development and Welfare funds to establish a Lands Commission.⁴⁴ Funding was approved and a Memorandum issued in 1951 outlining a modified terms of reference for the Special Lands Commission, as follows:⁴⁵

- a) To study, record and as far as possible correlate, native custom relating to land.

⁴² E.T. Barnes (Note by Assistant Secretary), Colonial Native Land Tenure Advisory Panel, British Solomon Islands Lands Commission, 19 June 1950: Lands Commission in B.S.I.P., Proposals for the Formation of, 1946-1954.

⁴³ One of his publications was Meek, C.K. and Hailey, B.W.M.H. (1949). *Land Law and Custom in the Colonies*. Oxford, Oxford University Press.

⁴⁴ Allan, *Solomons Safari 1953-1958*, 11.

⁴⁵ Allan, C.H. (1957). *Customary Land Tenure in the British Solomon Islands Protectorate: Report of the Special Lands Commission*. Honiara, Western Pacific High Commission, (i); see also Allan, *Solomons Safari 1953-1958*, 10.

- b) In light of the knowledge thus gained and of the apparent needs of the future to recommend in what way the use and ownership of native land and land to which no validated claim is found to exist, can be controlled: and to draft the necessary legislation to govern this.

When Allan was appointed as Commissioner in June 1953, he interpreted the terms of reference broadly.⁴⁶ He intended to ‘examine the whole system of customary land tenure and its course of evolution’ over three phases: ‘the general background of pre-war, post-war and future development’.⁴⁷

It is no accident that Allan decided to investigate customary land tenure in Solomon Islands in terms of these three phases, for he would have been aware that Maori land tenure had been examined in terms of the same three phases. Particularly, during the pre-war period, Maori land was held to have been under customary tenure; during the period of war during the 1860s between Maori tribes and the government, Maori lands had been substantially transferred from tribal to individual ownership. The government encouraged this practice by promoting a policy of direct purchase by European settlers from individual Maori, which this was legislated for under the Native Land Act 1862 (not repealed until the Native Land Act 1965).⁴⁸ The policy had a significant impact on Maori tribal structure because it promoted the individualisation of Maori land tenure. The Maori experience resonated with the Solomon Islands, where Islanders were increasingly contesting the manner of acquisition of customary lands and their lease to plantation companies for development. Plantation companies had

⁴⁶ Terms of reference for the Special Lands Commission was contained in the Western Pacific High Commission, Circular No. 47, 23 June 1953: Lands Commission in B.S.I.P Proposals for the Formation of 1946-1954, UASC, WPHC 9/II/48/32, Vol II.

⁴⁷ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii).

⁴⁸ Sorrenson, M.P.K. (1956). ‘Land Purchase Methods and Their Effect on Maori Population, 1865-1901.’ *The Journal of the Polynesian Society*, 65(3): 183-199, 183.

become the legal owners of the land, while access to the land for customary landowners was restricted or excluded. Allan's knowledge of Maori land issues, along with his training and career experience would strongly influence his approach and policy recommendations to the British administration.

5.4 Lands Commission Establishment

The personnel of the Special Lands Commission consisted of Allan, as the main investigator, Mr. Willie Pada, a Solomon Islander as the clerk, and support staff from the Protectorate Administration, which was responsible for arranging the tours and transport. Unlike commissions established in other British territories to enquire about land, such as the East Africa Royal Commission which had more than one commissioner, Allan was prepared to take up the task as sole lands commissioner.⁴⁹ In his role as sole lands commissioner, Allan assumed a central position in the development of policy solutions to address the problem of customary land tenure as a hindrance to development. He was able to channel his ideas and findings through the Special Lands Commission, through which the goal of land law reform was realised. The East Africa Royal Commission was established around the same time to investigate land issues to promote economic development. In contrast, the single commissioner of the BSIP Special Lands Commission also worked as part of the Protectorate Administration, and there was thus no clear distinction between his role as a government officer, investigator and researcher.

⁴⁹ Hood, *Developing the East African*.

As the commissioner, Allan adopted three principles that shaped the work of Special Lands Commission. Firstly, he took the ‘...widest interpretation to the terms of reference’.⁵⁰ Secondly, he chose not to focus on drafting legislation to govern future land policy, as required by the terms of reference. Instead, Allan sought the approval of the Chief Secretary to confine the work of the commission ‘...to recommending the lines for future policy’.⁵¹ Allan’s justification for this approach was that when the terms of reference were drafted in 1951 there was only one full time Law Officer who served the Western Pacific High Commission and the British Solomon Islands Protectorate Government. Once the Commission was constituted, Allan claimed ‘circumstances [had] now changed and the Commission was unqualified to draft legislation’.⁵² It was not surprising that Allan made such a claim rather than proposing someone with a legal background to assist, because the Commission was exclusively constituted. It was up to Allan as the key actor to map out what the Commission should focus on.

The third distinguishing element of Allan’s approach was the way in which he set up the Lands Commission agenda. Allan found that ‘much confusion existed as to what the commission was intended to achieve’.⁵³ In the view of some colonial officials, the commission was an academic exercise that should be given only low priority. One proposal, suggested by a WPHC secretariat administrative officer with an anthropological background, was for the commission to ‘...start in Fauro in the north-west and describe the lands of each

⁵⁰ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii).

⁵¹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii).

⁵² Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii).

⁵³ Allan, *Solomons Safari 1953-1958*, 14.

group, progressing steadily through the Protectorate to Tikopia'.⁵⁴ This supported the proposal by Noel, the Resident Commissioner, to set up a Lands Commission similar to the Lands Commission in Fiji.⁵⁵ A third view was to '...engage in a mammoth empire building exercise and launch a Gilbert and Ellice Islands Colony type of lands commission, with half a dozen or more expatriates conducting a *Maneaba* based inquiry into lands and descriptions'.⁵⁶ A fourth view was that the Commission 'should 'write down' the custom of every language group'.

Allan did not subscribe to any of these views because he had his own agenda. As the central actor with a network of associations, he enjoyed considerable control over the purpose and execution of the Lands Commission. First, he argued that the Commission was not an academic exercise and thus would not use complex anthropological terms in its report.⁵⁷ Second, he expressed the view that the approach of the Sukuna Lands Commission in Fiji could not be applied in BSIP because the kinds of social structure that existed in Fiji were not to be found in BSIP.⁵⁸ Allan's opinion was quite generalised and it seemed he already had a certain bias and preconceived ideas about Solomon Islands social structure. This bias reflected his mistaken ideas about Solomon Islands social structure, shaped by flawed and partial understandings gleaned from his prior experience, and also probably learned in part

⁵⁴ Allan, *Solomons Safari 1953-1958*, 14.

⁵⁵ Heath, Land Policy in Solomon Islands.

⁵⁶ Allan, *Solomons Safari 1953-1958*, 15.

⁵⁷ Allan, *Solomons Safari 1953-1958*, 16.

⁵⁸ Allan, *Solomons Safari 1953-1958*, 14-15.

from other colonial officers with similar misunderstandings, and perhaps his period at Cambridge studying under Fortune and others.⁵⁹

Third, Allan insisted that the prescribing of tribal boundaries, the describing of land rights, and the recording and codification of custom were matters for Solomon Islanders themselves.⁶⁰ He did not want to spend British funds on such an exercise because it was considered unprofitable and would involve a large group of expensive expatriates, whose work would certainly be rejected by Solomon Islanders.⁶¹ While cost may have been one justification, I would argue that what Allan did as the central actor was to avoid dealing with the complexities of customary land tenure. He imposed his own interpretations of the goals and methods of the Lands Commission, and positioned himself as a key actor where he could influence land policy recommendations and land reform.

5.5 Lands Commission's Work

Allan commenced the work of the Special Lands Commission on 6 May 1953. The Commission's work was a challenge because knowledge about customary land tenure in the protectorate was limited and enquiry about land was a sensitive issue. People who had worked in government since the establishment of the Protectorate and prior to WWII had very limited knowledge about land tenure in Solomon Islands. Anthropologists who had worked in Protectorate had seldom focused on the study of customary land tenure.⁶² In

⁵⁹ A prime example of this is Allan's assumption that all Solomon Islands societies were unilineal, for which he was criticised by Ian Hogbin: see Hogbin I. (1958). 'Colin H. Allan. Customary Land Tenure in the British Solomon Islands Protectorate (Book Review).' *Oceania*, 28(4): 336-336.

⁶⁰ Allan, *Solomons Safari 1953-1958*, 15.

⁶¹ Allan, *Solomons Safari 1953-1958*, 15.

⁶² Heath, Land Policy in Solomon Islands, 287.

addition, land was a sensitive issue due to the general dissatisfaction with the Protectorate administration and progressive development of 'land consciousness' in many parts of Solomon Islands since the 19th century and especially around the turn of the century. One of the reasons for this evolution of land consciousness was that many Solomon Islanders, particularly in the southeast (Malaita, Makira and Guadalcanal), who 'took part in the labour trade to and from Queensland, Australia and Fiji', saw clearly how Aboriginal Australians and Fijians had lost large portions of their land to European encroachment.⁶³ When those labour markets were closed in the early 1910s, people from the southeast came to dominate the workforce on plantations planted on land that Woodford had allowed to be alienated.⁶⁴ When these labourers returned from overseas to Solomon Islands, or later from plantations in the West, the Russells, or Guadalcanal to their home islands in the southeast, they warned their communities that Europeans were going to try to steal their land, and this made communities determined to resist land alienation as best they could. Despite land being a sensitive issue Allan was enthusiastic to take up the task 'of personally carrying out a survey of land tenure customs in all areas'.⁶⁵

⁶³ Malaita, Makira and Guadalcanal were the three islands that provided the largest numbers of indentured labourers: Moore, C. (2013). 'Labour on Overseas Plantations'. *Solomon Islands Historical Encyclopaedia 1893-1978*. Online, <http://www.solomonencyclopaedia.net/biogs/E000223b.htm> (Accessed 18/03/2017); see also Moore, 'The Misappropriation of Malaitan Labour', and Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*, 187.

⁶⁴ Moore, C. (2013). 'Labour on Protectorate Plantations'. *Solomon Islands Historical Encyclopaedia 1893-1978*. Online, <http://www.solomonencyclopaedia.net/biogs/E000775b.htm> (Accessed 18/03/2017).

⁶⁵ Heath, *Land Policy in Solomon Islands*, 288.

The Commission travelled first to the Western Solomons and started fieldwork in Choiseul, the Shortland Islands, Vella Lavella, Roviana and Marovo from 22 June to September 1953.⁶⁶ Choiseul and the Shortland Islands were selected by Allan as the first field sites in which to conduct enquiries because he had worked with the people from these two islands after the war and they knew him. He later visited Ysabel from 10 November to 4 December 1953. His subsequent fieldwork visits in early 1954 were to the Eastern Solomons, Guadalcanal and Russel Islands, before the Commission was indefinitely suspended on 15 May 1954. The Commission resumed work on 17 July 1956 and the final fieldwork visits were to San Cristobal, Ugi and Santa Ana, Santa Cruz, Tikopia and other outlying islands, and Malaita.⁶⁷

These fieldwork enquiries were ‘...approached partly according to conventional method and partly by methods developed by administrative experience in the Protectorate’.⁶⁸ The research methods employed consisted of archival research, interviews with individual Solomon Islanders, and meetings with communities to discuss land matters. He was familiar with these methods through his training in social anthropology at Cambridge. Research in the Western Pacific archive in Fiji provided information that would allow him to reconstruct how land had been administered and regulated in the past. Following an official request to the archivist, most of the archival materials were shipped to Honiara from Suva rather than have Allan spend time in Suva going through them. Drawing on ANT, I would argue that the associations Allan created with actors such as the archivist in Fiji, the enrolment of material

⁶⁶ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii) and (iii).

⁶⁷ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii) and (iii).

⁶⁸ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii) and (iv).

objects and his central role in driving the translation process of various interests shaped how the Commission worked to produce a report on land issues and recommendations for land law reform.

Allan conducted interviews both in small groups and with individuals but in many cases interviews would transform into larger gatherings which would in turn affect the inquiry process.⁶⁹ This is typical of how meetings and gatherings occur in rural parts of Solomon Islands. Many people would be keen to find out what the interviews were about and to become part of the conversation. In rural settings, meetings or gatherings are always inclusive because there is a sense of community. Interviews are often perceived as village meetings or gatherings that are open to anyone and they can attract a huge crowd. What this means is that a researcher does not have control over the number of people who might attend a meeting as attendance is influenced by factors such as the place, day and time on which the meeting is held, the size of the village population, and the area being discussed. Therefore, it was not surprising that Allan's interviews frequently turned into large gatherings because land as the subject matter for discussion is a topic that remains of immense interest to most Solomon Islanders. However, it is not clear from the Commission report what strategy and technique Allan used to handle such gatherings. Since there is no discussion in the report or in his field notes to suggest how he managed these events, I would argue that this omission affects the reliability of his assertions on the changing nature of customary land tenure. Allan's

⁶⁹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, (ii) and (iv).

assertions continued to influence land policy narratives today, underlining the considerable influence of individual personalities and approaches in the past.⁷⁰

Through its archival research, field enquiry and production of a report, the Special Lands Commission fulfilled a prescribed official purpose. Allan's recommendations, carefully framed in non-anthropological terms, reinforced those colonial land regulations in force throughout the British Empire which sought to control the relationship between customary landowners and British subjects over land.⁷¹ Hood observed a similar pattern when analysing the East Africa Royal Commission Report: 'The authors of commission reports fully chose their language in the pursuit of political goals, but their words also reveal the moral code and political pressures by which they lived and which limited their choices'.⁷² The recommendations of the Special Lands Commission report, over which Allan exercised considerable control, revealed his acknowledgement of the grievances of customary landowners, along with his subscription to the notion that customary land was a hindrance to development.

Allan's influence over the outcome of the Special Lands Commission Report illustrates how individuals and not just systems, networks or discourses play critical roles in determining outcomes. Allan's analysis of customary land tenure in Solomon Islands, as changing

⁷⁰ David Akins has also observed how Allan's writings on the Maasina Ruru Movement continued to influence the work of his successors, although his information on the movement, both while he was District Commissioner and then later when writing for academic and popular audiences, was inaccurate and misleading. Some of this inaccurate information involved highly derogatory images of Solomon Islanders, particularly Malaitans, both as individuals and collectively: see Akin, 'Maasina Rule beyond Recognition'.

⁷¹ Heath, *Land Policy in Solomon Islands*, 303.

⁷² Hood, *Developing the East African*, 8 and 9.

towards an individualised tenure arrangement through changes in inheritance patterns from matrilineal to patrilineal descent and an increase in land transactions, was almost certainly influenced by the findings of the Phillips Commission report (see Chapter 4), along with his exposure to the literature on socio-cultural processes in sub-regions such as Melanesia through his training at Cambridge. Allan's conclusions on the changing nature of customary tenure also appear to have been influenced by his knowledge of New Zealand's land tenure experience, whereby Maori communal tenure was changed to individual tenure due to ongoing land transactions sanctioned through colonial land laws.

Part of the global debate to which these ideas contributed concerned the problematising of customary land as an obstacle to productivity and agriculture development. This conception of customary land was reaffirmed in the 1951 United Nations report on *Land Reforms: Defects in Agrarian Structure as Obstacles to Economic Development*. This document advanced the argument that agrarian structures and tenure systems prevented 'a rise in the standard of living of small farmers and agriculture labourers and impede economic development', creating the need for land reform.⁷³ The Food and Agriculture Organisation (FAO) of the United Nations published two other documents in 1953 which further contributed to the post-war conceptual framing of land reform: *Communal Land Tenure*⁷⁴ and *Inter-relationship between Agrarian Reform and Agriculture Development*.⁷⁵ Promoted

⁷³ United Nations (1951). *Land Reforms: Defects in Agrarian Structure as Obstacles to Economic Development*. New York, United Nations, Department of Economic Affairs, 89.

⁷⁴ FAO (March 1953). *Communal Land Tenure*. Rome, Food and Agriculture Organisation of the United Nations.

⁷⁵ FAO (September 1953). *Inter-Relationship between Agrarian Reform and Agriculture Development*. Rome, Food and Agriculture Organisation of the United Nations.

in this way, land reform gained increasing prominence as a component of the international development agenda during the 1950s and 1960s. Mohamad Riad El-Ghonemy shows how land reform was implemented by newly independent developing countries with the support of developed countries and international organisations. Here the focus of land reform was to alleviate poverty and inequalities in rural areas where rural poverty and underdevelopment were linked to issues of ownership and access to land.⁷⁶

The debate on customary land was associated with the dominant view that development of a capitalist economy would introduce an inevitable process of evolution towards individual tenure. The concept of development was perceived as an evolutionary process towards modernisation whereby societies would be transformed in terms of living standards and material wealth from being ‘traditional’ to ‘modern’.⁷⁷ An important aspect of the modernisation discourse is that it ‘constitutes a total vision of development, as both process and condition’.⁷⁸ Scholars such as Pauline Peters have argued that land reform policies promoted in Africa from the 1960s to the early 1980s were influenced by the perception ‘that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land’.⁷⁹ This lack of security was associated with ambiguous and

⁷⁶ El-Ghonemy, M.R. (2003). ‘Land Reform Development Challenges of 1963-2003 Continue into the Twenty First Century.’ *Land Reform, Land Settlement and Cooperatives Bulletin*. Rome, Food and Agriculture Organisation of the United Nations, 32-42, 33.

⁷⁷ Young, E. (1995). *Third World in the First: Development and Indigenous Peoples*. London and New York, Routledge, 4.

⁷⁸ Leftwich, A. (2000). *States of Development: On the Primacy of Politics in Development*. Cambridge, Polity Press, 33.

⁷⁹ Peters, P.E. (2009). ‘Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions.’ *World Development*, 37(8): 1317-1325, 1318.

unenforceable property rights. As a result, state intervention to create and clarify these rights through land registration and titling, to be held by individuals, was considered essential.⁸⁰ This policy position provided the impetus for directing land reform during the post-WWII era in developing countries towards the ‘redistribution of property rights in land’.⁸¹

The idea of ‘development’ was measured largely on the basis of economic variables such as increased income, participation in wage labour, and growth in material wealth. The traditional/modern dichotomy was central to the conceptualisation of development as an element of modernisation and was ‘formulated according to complex processes that include traditional practices, histories of colonialism, and contemporary location within the global economy of goods and symbols’.⁸² One popular development theory of the period was that all societies pass through five stages of development: traditional society, the precondition for take-off, the take-off, the drive to maturity, and the age of high consumption.⁸³

Other theories were based on the assumption that benefits generated through modernisation would ‘trickle’ down to lower societies or would move from the core to the periphery.⁸⁴ The common feature about these theories was that their approach to development was ‘top down’,

⁸⁰ Peters, ‘Challenges in Land Tenure and Land Reform in Africa’.

⁸¹ Lehmann, D. (1978). ‘The Death of Land Reform: A Polemic.’ *World Development*, 6(3): 339-345, 339.

⁸² Escobar, A. (1995). *Encountering Development: The Making and Unmaking of the Third World*. Princeton, Princeton University Press, 13.

⁸³ Rostow, W. (1960). *The States of Economic Growth: A Non-Communist Manifesto*. Cambridge, Cambridge University Press; for further discussion of Rostow’s five stages see Roxborough, I. (1979). *Theories of Underdevelopment*. London, Macmillan.

⁸⁴ For discussion of these development theories see Berlage, L. and Stokke, O. (1992). *Evaluating Development Assistance: Approaches and Methods*. London, Frank Cass and Co Ltd 111; Young, *Third World in the First*, 4.

with an emphasis on ‘industrialisation, monetisation and the adoption of a belief in the need for resource exploitation on a large scale’.⁸⁵ The main weakness with this prevalent conventional view of development was that it suggested a linear progression of social change, whereas in practice societies did not always develop in the same ways and directions.⁸⁶

Allan’s analysis of customary land as a hindrance to capitalist development due to its undefined boundaries and rights was thus in line with the theoretical and policy debates current at the time. As observed by Heath: ‘Allan’s analysis reflected his apparent acceptance of commonly held attitudes of European administrators ... that customary tenure was inevitably moving toward individualized tenure’.⁸⁷ Anthropologist Ian Hogbin, in his review of the Commission report, suggested that:

Allan seems to think that all societies have now, or did once, a system of unilineal groups, either patrilineal or matrilineal. He has apparently never heard of cognatic societies, where such groups are lacking. He is therefore misleading on north Malaita and some the western islands. New Georgia, for example, he describes as in process of switching from matrilineal to patrilineal descent, quoting in support a previous Lands Commissioner, Mr. Phillips (later Mr. Justice Phillips, Chief Judge of New Guinea Papua [sic]), who was without even an elementary training in anthropology.⁸⁸

Hogbin criticised Allan’s misunderstanding of descent group structures in Solomon Islands.

Allan assumed that all Solomon Islands societies were unilineal, although the island on which he had spent most of his time in the Solomons, Malaita, has cognatic descent and land

⁸⁵ Young, *Third World in the First*.

⁸⁶ For a detailed discussion of the challenges to the conventional view of development see: Young, *Third World in the First*.

⁸⁷ Heath, *Land Policy in Solomon Islands*, 302.

⁸⁸ Hogbin, ‘Colin H. Allan. Customary Land Tenure in the British Solomon Islands Protectorate (Book Review).’

systems, as did some of the other places to which he had been posted previously. Heath offered another criticism, pointing out that '[i]t seems that Allan adhered implicitly if not explicitly to a unilineal theory of cultural evolution', which was '...popular during the mid to late nineteenth century, but generally had fallen into disuse or even ridicule by the 1920s and 1930s'.⁸⁹ While some of the conclusions reached by Allan could be contested, his report still provided an important basis for land policy and reform in Solomon Islands.

5.6 The Approach of the Special Lands Commission

Allan acquired information and knowledge about land tenure through a process of circulation through 'networks in patterned ways that imbue the piece of knowledge with authority and relevance',⁹⁰ where the network 'is a metaphor for the flows of translations that actants go through in making connections.'⁹¹ In Allan's case, these 'flows of translation' led him to theoretical reference points from New Zealand, Melanesia and Africa. He made reference to scholarly material and experience from each of these three regions, which provided him with a comparative basis for his probe into the complexity of customary land tenure in Solomon Islands. A closer look at the reference points provides an understanding of the theoretical underpinning of the work of the Special Lands Commission and how this was translated into the final report.

⁸⁹ Heath, *Land Policy in Solomon Islands*, 291.

⁹⁰ Gershon, I. (2010). 'Bruno Latour (1947–).' In Simons, J. (ed), *Agamben to Zizek: Contemporary Critical Theorist*. Edinburgh, Edinburgh University Press, 161-176, 1970.

⁹¹ Mützel, S. (2009). 'Networks as Culturally Constituted Processes: A Comparison of Relational Sociology and Actor-network Theory.' *Current Sociology*, 57(6): 871-887, 877.

Allan's first point of reference was New Zealand, where his background and exposure to debates around Maori land and policy had provided him with a broad grasp of issues and concepts relating to customary tenure. Prior to taking up his role as Lands Commissioner, Allan had returned to New Zealand for a period of four months, during which time he reviewed the available literature on Maori land and policy, focusing on the Middle Waikato area. This area had been successful in establishing a Maori King in 1858, in an attempt to establish a pan tribal league. The King Movement sought to counter the political authority of the colonial administration, protesting against unequal land dealings and rejecting land laws passed by the authorities.⁹² Almost a century later, the Solomon Islands' Maasina Ruru Movement was also identified as an anti-colonial political movement, on which Allan had written his thesis in social anthropology at Cambridge.⁹³

Allan's understanding of Maori land and policy put him in a strong position to draw comparisons between New Zealand and the BSIP context. He noted that the New Zealand land laws were '...highly paternalistic and the decisions of the Maori land courts were contributing extensively to grave multiple ownership and fragmentation'.⁹⁴ He observed that the land laws favoured the Europeans, causing Maori to be considered as second class

⁹² Sorrenson, M.P.K. (1965). 'The Politics of Land.' In Pocock, J.G.A. (ed), *The Maori and New Zealand Politics*. Auckland, Blackwood & Janet Paul Ltd, 21-45, 21.

⁹³ For discussion referring to the Maasina Ruru Movement see: Nanau, G. (2011). 'The Wantok System as a Socio-economic and Political Network in Melanesia.' *Omnes: The Journal of Multicultural Society*, 2(1): 31-55; Strathern, A. and Stewart, P.J. (2005). 'South-West Pacific Research: Trends and Suggestions.' *Retrospects and Prospects of Pacific Islands Studies in Taiwan, Asia-Pacific Forum*, 30 (Special Issues): 96-125; Scott, M.W. (2012). 'The Matter of Makira: Colonialism, Competition, and the Production of Gendered Peoples in Contemporary Solomon Islands and Medieval Britain.' *History and Anthropology*, 23(1): 115-148; Corbett, J. (2012). "Two Worlds'?" *The Journal of Pacific History*, 47(1): 69-91.

⁹⁴ Allan, *Solomons Safari 1953 – 1958*, 13.

citizens. He concluded that ‘in the Solomon Islands important lessons were to be learnt from the failure of both colonial and postcolonial policies to devise a positive policy for Maori land and its development’.⁹⁵ Such observations undoubtedly influenced the way in which he conceptualised the work of the Special Lands Commission and its policy recommendations. As the central actor, Allan would use his knowledge of Maori land issues as an important variable in the search for a solution to land issues in Solomon Islands.

Allan’s second reference point was Melanesia. His knowledge of Melanesia was based not only on his work experience in BSIP prior to his appointment as Lands Commissioner, but also on his training in social anthropology at Cambridge. Allan considered a list of questions drafted by Dr. C.K. Meek following the Land Tenure Council Panel request in 1950. However, he perceived these questions as inconsistent with Solomon Islands context ‘...because they were closely related to circumstances in Africa’.⁹⁶ In revising the questionnaire for the purposes of the Special Lands Commission, Allan sought instead to draw on the works of anthropologists of Melanesia, such as Hogbin, Fortune, Malinowski and Rivers.⁹⁷ Hogbin had conducted extensive fieldwork in the Solomon Islands, mainly on Guadalcanal and Malaita.⁹⁸ Allan also regarded as helpful the written notes of Ratu Sir Lala

⁹⁵ Allan, *Solomons Safari 1953 – 1958*, 13.

⁹⁶ Allan, *Solomons Safari 1953 – 1958*, 17.

⁹⁷ Allan, *Solomons Safari 1953 – 1958*, 17.

⁹⁸ Rivers’ research and the focus of his publications was on Solomon Islands (particularly Simbo) and Vanuatu, while the work of Fortune and Malinowski focused largely on the territories of New Guinea and Papua, respectively. Hogbin, H.I. (1934). ‘Culture Change in the Solomon Islands: Report of Field Work in Guadalcanal and Malaita.’ *Oceania*, 4(3): 233-267; Hogbin, H.I. (1937). ‘The Hill People of North-Eastern Guadalcanal.’ *Oceania*, 8(1): 62-89; Hogbin, H.I. (1938). ‘Social Organization of Guadalcanal and Florida, Solomon Islands.’ *Oceania*, 8(4): 398-402; Hogbin, H.I. (1944). ‘Native Councils and Native Courts in the Solomon Islands.’ *Oceania*, 14(4): 257-283; Hogbin, H.I. (1945). ‘Notes and Instructions to Native Administrations in the British Solomon Islands.’ *Oceania*, 16(1): 61-69.

Sukuna in 1932 on Fijian land custom and ‘as a guidance for his colleagues on the Native Lands Commission’.⁹⁹ As an indigenous Fijian leader, Ratu Sukuna had played a key role in the subsequent establishment of the Native Land Trust Board (now known as the ‘*Itaukei* Land Trust Board’) under the Native Land Trust Ordinance of 1940.¹⁰⁰ Allan had also looked over ‘a list of questions proposed by the late David Wilkinson when he made personal enquiries into native land ownership in Fiji at the beginning of the century’.¹⁰¹ Wilkinson had been the Government Interpreter and Native Commissioner. In this instance, Allan considered Sukuna’s notes as of great value in assisting him to assess the evolution of customary land in Solomon Islands.¹⁰² With Wilkinson’s list of questions, Allan pursued the same broad lines of enquiry.¹⁰³

Allan’s final reference point was Africa. He had a close working relationship ‘with the Colonial Land Tenure Panel and the Land Tenure Specialist, who at that time operated from the African Studies Branch of the Colonial Office’.¹⁰⁴ One individual with whom Allan had enjoyed close links since 1953, when the Special Lands Commission commenced its work, was Stanhope Rowton Simpson, an administrator in the Sudan and Secretary of the Colonial

⁹⁹ Deputy Secretary for Fijian Affairs to Colin Allan, 7 April 1954: Sir Colin Allan Papers on the Solomon Islands and Vanuatu, 1881-1993, PMB 1189/220, Reel 8.

¹⁰⁰ Basawaiya, N. (1997). ‘Status of Indigenous Rights in Fiji.’ *St. Thomas Law Review*, 10(1): 197-209; see also Jolly, M. (1992). ‘Custom and the Way of the Land: Past and Present in Vanuatu and Fiji.’ *Oceania*, 62(4): 330-354.

¹⁰¹ Allan, *Solomons Safari 1953-1958*, 17-18.

¹⁰² Colin Allan to G.K Roth, Deputy Secretary of Fijian Affairs, 19 February 1954: Sir Colin Allan Papers on the Solomon Islands and Vanuatu, 1881-1993, PMB 1189/220, Reel 8.

¹⁰³ Colin Allan to G.K Roth, Deputy Secretary of Fijian Affairs, 21 April 1954: Sir Colin Allan Papers on the Solomon Islands and Vanuatu, 1881-1993, PMB 1189/220, Reel 8.

¹⁰⁴ Allan, *Solomons Safari 1953-1958*, 16.

Land Tenure Panel who later became Land Tenure Advisor.¹⁰⁵ Colonial officials such as Simpson were exposed to the work of the East Africa Royal Commission, which identified customary land tenure as a hindrance to economic development and recommended in its report the gradual conversion of customary tenure to individual ownership.¹⁰⁶ Through the network of association that Allan had with individuals such as Simpson, he became exposed to global ideas on land tenure.

Allan also spent some time in Britain when the Special Lands Commission was suspended on 14 May 1954 due to a shortage of staff in the Secretariat.¹⁰⁷ Here he had the opportunity to consult Simpson in the Colonial Office about land matters, which presumably assisted him in his role when the Special Lands Commission resumed work on 17 July 1956. I would argue that Allan's networked association with other actors such as Simpson, along with his visits to places such as New Zealand and Britain, exposed him to past and current debates on customary land in other colonies, particularly in Africa. This exposure appears to have influenced his work and shaped his recommendations for land law reform in Solomon Islands. If Allan's first move, described here, was to capture the interest of actors such as Simpson through a network of association, his second move was to go out to the field to collect data on land problems in Solomon Islands, producing a report with a set of recommendations for land reform. His third move, which I will discuss in Chapter 6, was his membership on the committees established to examine the draft land law.

¹⁰⁵ Coldham, S. (1981). 'Review of S. Rowton Simpson 'Land Law and Registration'.' *Journal of African Law*, 25(1): 45-46.

¹⁰⁶ Mugambwa, J. (2007). 'A Comparative Analysis of Land Tenure Law Reform in Uganda and Papua New Guinea.' *Journal of South Pacific Law*, 11(1): 39-55; see also Hood, Developing the East African.

¹⁰⁷ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, iii.

5.7 The Lands Commission Report

There were two specific terms of reference for the Special Lands Commission.¹⁰⁸ The first emphasised the study and documentation of native customs in relation to land tenure. This required inquiry into the rules of custom as they regulated, shaped and influenced the nature of tenure arrangements in BSIP. The second term of reference emphasised the provision of policy recommendations and the drafting of a legislative framework to address questions of use and ownership of native land. These two terms of reference were premised on the perception that traditional customs dealing with native land were either lost, forgotten, out of date or inadequate to ascertain questions of ownership, tenure and inheritance. No records existed of native land titles and there was no policy regarding the control of native land.

While the two terms of reference were quite specific, Allan's approach reflected a broad interpretation. As a result, the Commission report covered a correspondingly wide range of topics such as the history of land law, the nature of customary land tenure, emerging land issues in BSIP, and options for legislative land reform. While the report provided a clear historical outline of land issues it did not provide a critical analysis of problem solving mechanisms and governance arrangements in relation to land. In the Commission report, Allan made assertions about the changes needed to land tenure and inheritance practices without substantiating how he had reached these conclusions. He made recommendations for

¹⁰⁸ The preamble of Memorandum No. C.D.W. (D) 2179 issued by the Colonial Office cited in Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, i.

the registration of land rights, the issue of titles and the vesting of unoccupied land in a land trust board, but without any explanation of how this should be constituted.¹⁰⁹

The Commission report was grounded on two central themes. The first was the correlation between development and commercial interests in land, which impacted on how various actors made claims to land rights through either customary or State-sanctioned mechanisms. The second emerging theme related to the types of action taken by the government to address the issues that emerged from the first theme.¹¹⁰ These two central themes provided the basis for framing land reform policy, which was influenced by a network of actors through a process of policy transfer:¹¹¹ Allan, as the key actor was able to mobilise an association of alliances with other actors through a process of translation. These alliances then shaped the transfer of policy and land tenure ideas, from other colonies such as New Zealand and Kenya.¹¹²

The Special Lands Commission's task was challenging because of the complexities surrounding the relationship between development, commercial interests and customary land, each influenced by a variety of actors. Despite this complexity the Commission did a reasonable job in addressing those issues that were within its competence. The Commission report confined its scope to the recommending of a policy framework for land law reform. In

¹⁰⁹ Mair, L.P. (1959). 'Customary Land Tenure in the British Solomon Islands Protectorate by Colin H. Allan (Book Review).' *Man*, 59(19): 19-20, 20.

¹¹⁰ Mair, 'Customary Land Tenure in the British Solomon Islands Protectorate by Colin H. Allan (Book Review)', 19.

¹¹¹ Dolowitz, D. and Marsh, D. (1996). 'Who Learns What from Whom: A Review of the Policy Transfer Literature.' *Political Studies*, 44(2): 343-357, 344.

¹¹² Larmour, 'Policy Transfer and Reversal', 151-161.

his review of the Report, Hogbin highlighted the importance of this work in providing a starting point to assist actors responsible for framing the government's land policy and reform agenda.¹¹³

5.8 Findings and Recommendations

The findings and analyses of the Commission report were influenced by 'new ideas and the work of Simpson and the East African Royal Commission'.¹¹⁴ The report's recommendations simultaneously promoted the consideration of custom and the creation of a modern tenure system 'by providing legislative and administrative arrangements to enable customary interests in land to be adjudicated, and registered, and for individual titles to be issued in respect of them'.¹¹⁵ I would argue, along with Heath, that some of Allan's recommendation for land law reform in Solomon Islands largely paraphrased 'the recommendations of the East African Royal Commission'.¹¹⁶ Through his actor-networking associations, Allan drew on ideas or transferred objects from the East African Royal Commission report to shape his own recommendations, which in turn determined the future legislative framework of Solomon Islands.

According to Dolowitz and Marsh, amongst the objects that can be transferred are 'policy goals, policy context, policy instruments, policy programs, institutions, ideologies, item, attitudes and negative lessons', while the degrees or modes of transfer include 'copying,

¹¹³ Hogbin, 'Colin H. Allan. Customary Land Tenure in the British Solomon Islands Protectorate (Book Review).'

¹¹⁴ Heath, Land Policy in Solomon Islands, 309.

¹¹⁵ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 278.

¹¹⁶ Heath, Land Policy in Solomon Islands, 309.

emulation, hybridization, synthesis, and inspiration'.¹¹⁷ Allan's translation through the Special Lands Commission of the recommendations of the East African Royal Commission and of Simpson's ideas was critical in facilitating the transfer of ideologies and policy goals. His recommendations informed and influenced land law reform because, as I discuss in Chapter 6, he was able to secure the cooperation of policy actors by convincing them that the lands commission held the solutions for land reform.

Significantly, the Commission report revealed a positive population trend in most islands of the Protectorate. This refuted the long-standing discourse on depopulation, which had been prevalent throughout the early colonial era. But there was, as yet, no proper system in place to record births, deaths and marriages in order to trace descent, essential for a modern land tenure system. Hence, the principal methods recommended by Allan to encourage the emergence of a new modern tenure system included: introducing a system for recording births, marriages and deaths; creating land titles; discouraging permanent improvement to lands that did not have a primary interest attached; providing administrative support mechanisms to assist individuals who were progressively moving towards individual tenure without any obstruction from others; and providing services including agricultural advice in areas where individual tenure was prevailing.¹¹⁸ The findings, analyses and recommendations in the Commission report reflected Allan's 'acceptance of commonly held attitudes of the

¹¹⁷ Dolowitz and Marsh, 'Who Learns What from Whom'; see also Stone, D. (2004). 'Transfer Agents and Global Networks in the 'Transnationalisation' of Policy.' *Journal of European Public Policy*, 11(3): 545-566.

¹¹⁸ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 270.

European administrator ... that customary tenure was inevitably moving toward individualized tenure'.¹¹⁹

I would add to Heath's analysis that Allan's findings and analyses resonated with the evolutionary theory of land tenure, which influenced policy debates about land across the colonies, not just in Melanesia but globally. Allan claimed that individual tenure was emerging in Solomon Islands because of historical events such as the experience of encounter between settlers and landowners or pressure on land. This progressive breakdown in customary tenure was due to factors such as competition for coastal land, the influence of European ideas about land, and the limiting of cash crops to the cultivation of permanent economic trees.¹²⁰

The evolutionary theory of property rights proposes that the impact of an increasing population and market integration results in the individualisation of tenure, creating the impetus for right-holders to demand formal property right arrangements.¹²¹ In Solomon Islands' case, Allan claimed that the positive population trend had combined with market integration, through trade with settlers and the leasing of land, to transform customary land into property. The report's findings appeared to resonate with an evolutionary theory of property rights. Although there were no British Solomon Islands Protectorate statistics

¹¹⁹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 302.

¹²⁰ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 268-269.

¹²¹ Platteau, J.P. (2008). 'The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment.' *Development and Change*, 27(1): 29-86; see also: Larmour, 'Policy Transfer and Reversal'; Fitzpatrick, D. (2005). 'Evolution and Chaos in Property Right Systems: The Third World Tragedy of Contested Access.' *Yale Law Journal*, 115(5): 996-1048; Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis.

collected for the population between the 1930 head count and the 1959 census, Allan was broadly aware that the numbers were increasing: he provided some population figures for Simbo, based on Medical Department surveys, which showed a rising trend.¹²² With regard to the progressive breakdown in customary tenure arrangements there was no evidence provided to show how and to what extent this was happening. I contend that Allan's reliance on the evolutionary theory of property rights to explain the nature of customary land in Solomon Islands reflected his training at Cambridge and his networks of association with actors who had worked in colonies in Africa. His ability to identify land issues and discuss them in such a way as to make them visible to colonial policy actors partly explains his success.

The central policy framework recommended by Allan to facilitate a modern tenure system involved recognition of the existing customary system alongside the promotion of land adjudication and registration.¹²³ Allan provided a detailed account of this process and proposed that it should be applied only to areas in which there was:¹²⁴

- a) competition for land resulting in disputes that hindered development;
- b) past land alienations that were now disputed by Solomon Islanders;
- c) resumption of native leases by Solomon Islanders, but where former interests in the land disputed this, hindering development of the land;
- d) land earmarked for resettlement;
- e) land acquired for public purpose;
- f) native land to be leased;
- g) land contemplated for mining and forestry development;
- h) planting of economic crops resulting in land competition and tenure insecurity;
- i) hindrance of application of loan facilities due to a lack of negotiated title;
- j) breakdown of individual tenure resulting in land sales; or

¹²² Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 18-19.

¹²³ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 278.

¹²⁴ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 278.

- k) conflict between customary and new economic needs resulting in inadequate protection of property rights.

The report also proposed additional conditions, borrowed from East Africa,¹²⁵ such as: a reasonable measure of support for the system; availability of capacity and survey facilities; full appreciation of the costs involved; and recognisable and defined areas.¹²⁶

The implementation of a system of adjudication and registration of land boundaries and ownership in order to bring about individualization was not unique to Solomon Islands. It first appeared in Africa, particularly in the Anglo-Egyptian Sudan region by virtue of the Khartoum, Berber and Dongolar Lands Ordinance 1899.¹²⁷ This Ordinance provided for a systematic ascertainment of rights in land referred to as land settlements. Kitchener, as Governor General of the Anglo-Egyptian Sudan, was the key actor responsible for driving this process during this period, drawing on his prior experience with the Royal Engineers on the Ordnance Survey in England, which he had subsequently applied in Palestine and Cyprus.¹²⁸ This process of systematic adjudication in Sudan was incorporated under the Land Settlement and Registration Ordinance 1925, and was then introduced in Palestine under the Land Settlement Ordinance 1928 and in Sarawak under the Land Settlement Ordinance 1933.¹²⁹

¹²⁵ Lightfoot, E. (2003). 'The Policy Transfer Model: A Tool to Help Social Workers Engage in Successful Policy Making,' *The Social Policy Journal*, 2(1): 21-34, 21.

¹²⁶ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 280-1.

¹²⁷ Simpson, S.R. (1976). *Land Law and Registration*. Cambridge, Cambridge University Press, 197-8.

¹²⁸ Simpson, *Land Law and Registration*, 198.

¹²⁹ Simpson, *Land Law and Registration*.

The underlying rationale for adjudication and registration was legal security of tenure. In other words, the policy reform agenda involved a change in customary tenure through an adjudicating process to identify whether an interested party existed. This is followed by registration in order for the state to issue a title and at the same time administer the register. The adjudication and registration processes were mechanisms introduced by the state to facilitate the transition of customary land to a formal property rights system that would allow for land transfer or dealings.¹³⁰ For Allan, the main advantage of the proposal for adjudication and registration was that it ‘represents a policy which can be geared to speed economic development in different areas ... [t]he essential purpose is to improve economic use of land’.¹³¹ He pointed out in the Special Lands Commission Report that past land policy had paid scant attention to the nature of interests in land prior to its being alienated either as freehold, waste land and leasehold. The Commission suggested that a ‘[m]ore precise and extensive arrangement was necessary’¹³² and that this would require a general land policy applicable to all land. In this way, Allan continued to promote the idea of transforming customary land into a formalised property rights system of landholding that provided clearly defined and enforceable rights to guarantee legal security for capitalist development.

The Special Lands Commission recommended that the law relating to compulsory acquisition of land for public purpose be amended to ‘provide for the adjudication of interests and the payment of proper compensation’.¹³³ The Commission also recommended that since

¹³⁰ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 284.

¹³¹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 285.

¹³² Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 285.

¹³³ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 293-4.

no title was issued to informal property arrangements, the legislation should preclude people from establishing ‘prescriptive interest in land, unless the interest has been established and exercised for 25 years’.¹³⁴ Such legislative prohibition of asserting prescriptive interest should apply to all land, including native land. However, the Commission proposed the idea of a new land code that would promote a unified approach to the controlling of all lands rather than just an amendment of the existing land legislation, which was focused primarily on the ‘alienation of native land or the leasing of public land’.¹³⁵

The Commission recommended that administration of the proposed land arrangement schemes would require the establishment of a Land Tenure Officer, Land Committees and a Land Trust Board. The recommended role of the Land Tenure Officer was to liaise between the government and land committees, convey local circumstances and opinion to government, implement government policy decisions, assist in the adjudication process, and give advice on land tenure aspects relating to resettlement policy including its execution.¹³⁶ The recommended role of the Land Committees was to translate government land policy to the people, promote the idea of land adjudication and registration, review land tenure developments and needs, advise and assist the Land Trust Board to fulfil its roles and keep people in touch with development, with a view to establishing a national land consciousness.¹³⁷ The Commission recommended that the composition of the Lands Committees should reflect the different circumstances of each island but in general should

¹³⁴ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 295.

¹³⁵ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 274.

¹³⁶ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 298.

¹³⁷ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 300.

include ‘representatives of land authorities, progressive land users and producers, the local council, and if available, competent and respected local officers of technical departments such as Agriculture, Forestry and Lands’.¹³⁸

As for the Land Trust Board, the Lands Commission recommended that it should be composed of the High Commissioner as chair, the Commissioner of Lands, Land Tenure Officer and two native members nominated by the High Commissioner. The responsibility of the Board was to administer classes of land such as ‘trust land,¹³⁹ land for resettlement, native land to be leased, public lands, and reserved land’¹⁴⁰ identified through an adjudication process as vacant land. The registered title of such lands should be vested in the Land Trust Board. As for all Certificates of Occupation License that were still in existence, the Commission recommended their cancellation and that the land be proclaimed as trust land, with a new Certificate issued to the new holders.¹⁴¹ The Commission further recommended that the issue of the Crown ‘vested with control in forests, saltwater swamps and seas below high water mark, together with all rivers, waterways, streams and springs in all Protectorate land should be considered in conjunction with the above recommendations relating to waste land’.

¹³⁸ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 300.

¹³⁹ Any other alienated or public land identified as vacant land because its previous owner had passed away or disappeared should not be called waste land but registered as trust land.

¹⁴⁰ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 298.

¹⁴¹ Allan, *Customary Land Tenure in the British Solomon Islands Protectorate*, 285.

5.9 Conclusion

Allan played a central role in the Special Lands Commission's development of recommendations and proposal of solutions to address customary land tenure issues in Solomon Islands. He was uniquely placed to work as Special Lands Commissioner because of his prior experience working in Solomon Islands, his knowledge of Maori land issues in New Zealand, and his association with influential actors elsewhere in the colonial world. Through these different experiences, Allan was able to draw on a wide range of ideas to shape his policy recommendations; his ideas and articulation of land issues appear to have been further shaped by his fieldwork, extensive reading of the literature on Africa and the South Pacific, and the actor-networks that he created through his work. Allan also particularly adept at managing his political environment, and ensuring that his views and recommendations were adopted by his peers and superiors. Allan's experience and his deft handling of the political environment are reflected in the Special Lands Commission Report, and particularly, in the framing of the policy recommendations that directed the state's attempts at land law reform. Many of these recommendations were adopted as part of the land law reforms, which are the focus of Chapter 6.

CHAPTER 6: Actors, Networks and Land Law Reform, 1950s-1990

6.1 Introduction

As Chapter 5 demonstrates, Colin Allan powerfully dominated the work and findings of the Special Lands Commission. Through the networks in which he participated, he was able to draw on ideas that reflected the evolutionary and modernising discourses emergent at the end of the Second World War to shape the Commission's findings and policy recommendations. These discourses imagined development as associated with 'growth, evolution, maturation'¹ – as a historical process leading inevitably to modernization. This modern development paradigm, which I will expand on in the next part of this chapter, is often traced back to the 1949 address of United States President Truman, in which he declared that Americans should embark on a new program, extending the benefits of their scientific advances and industrial progress 'for the improvement and growth of underdeveloped areas'.²

Although law has been considered by policy and state actors as a crucial prerequisite in the processes of development, there has been little scholarly analysis of the relationship between land law reform and development in Solomon Islands. The regional literature on land law and development in Melanesia is dominated by research in Papua New Guinea.³ In this

¹ Esteva, G. (1995). 'Development.' In Wolfgang, S. (ed), *The Development Dictionary: A Guide to Knowledge as Power*. London & New Jersey, Zed Book, 6-25, 10.

² Esteva, 'Development', 6.

³ Paliwala, A., Zorn, J. and Bayne, P. (1978). 'Economic Development and the Changing Legal System of Papua New Guinea.' *The Journal of Legal Pluralism and Unofficial Law*, 10(16): 3-79; Connell, J. (1997). *Papua New Guinea: The Struggle for Development*. London and New York, Routledge; Mugambwa, J.T. and Amankwah, H.A. (2002). *Land Law and Policy in Papua New Guinea*. London and Sydney, Cavendish Publishing Limited; Lea, D. and Curtin, T. (2011). *Land Law and Economic Development in Papua New Guinea*. Newcastle, Cambridge Scholars Publishing.

chapter I explore how land law reform has been an important tool for promoting development in Solomon Islands in the post-war era and after Independence. Governments during this period – colonial as well as independent – devoted considerable attention to bringing customary land into the formal state system as registered estate, culminating in three major attempts at land law reform. The first of these attempts was the Lands and Titles Ordinance 1959; the second attempt involved the amendment, revision and consolidation of the Land and Titles Ordinance in 1968; and the third involved a number of land reform measures, which subsequently led to the enactment of the Customary Land Records Act 1994.

My focus will be on how new generations of key actors adopted, modified and further developed ideas which influenced these attempts at land law reform. This will involve demonstrating the influence during this period of ideas about general law and development in Solomon Islands. As for the earlier periods, key actors played a significant role in these land reform attempts by operating within actor-networks that enhanced the flow of ideas from other colonies or countries to Solomon Islands. This chapter first discusses the development paradigm that became influential in Solomon Islands from the aftermath of the Second World War to the 1990s. Secondly, I explore the background of a particular key actor – Peter Brett – to explain how he became central to drafting the Lands and Titles Ordinance 1959. Thirdly, I discuss the roles of Brett and other actors in influencing land law reform attempts in Solomon Islands from the late 1950s to the early 1990s.

6.2 Development and Law

Before the 1930s development was thought of in the ‘naturalistic sense, as the emergence of something over time’.⁴ After World War II, the concept of ‘development’ as a distinct and desirable process gained prominence and attracted extensive debate among scholars. Different theories emerged in the literature to conceptualise development. In his overview of the law and development literature, Elliot Burg has examined these theories.⁵ Drawing on Burg, Hassane Cissie and Marie-Claire Cordonier Segger have discussed these theories under three broad categories: first, an economic growth theory which defines development as a rise in per capita output as ‘a means of building strong market economies’, including ‘the freedom to have a say in decisions that shape’s one’s life, or at least, to have an opportunity to do so’;⁶ second, a social theory which links development to the distributional aspects of economic life whereby growth is necessary but must be matched with the equitable distribution of resources; third, in legal and political terms, the view that development is linked to democratic institutions and free society.⁷

Following the end of WWII, development was ‘expressed in the vocabulary of decolonisation and government planning, institutionalised in a proliferation of international agencies, and

⁴ Escobar, A. (1995). *Encountering Development: The Making and Unmaking of the Third World*. Princeton, Princeton University Press, 73.

⁵ Burg, E.M. (1977). ‘Law and Development: A Review of the Literature & a Critique of "Scholars in Self-Estrangement".’ *The American Journal of Comparative Law*, 25(3): 492-530.

⁶ Cissie, H. and Segger, M.-C.C. (2013). ‘Challenging New Era for Law, Justice and Development.’ In Cisse, H., Menon, N.R.M. and Segger M.-C.C., and Nmehielle, V.O. (eds), *World Bank Legal Review: Fostering Development through Opportunity, Inclusion, and Equity Vol 5*. Herndon, VA, USA, World Bank, 615-637, 615.

⁷ Cissie and Segger, ‘Challenging New Era for Law, Justice and Development’, 615-616.

studies by Western, and notably American, social scientists’.⁸ It was considered an important means of alleviating poverty, articulated through a neoclassical economic growth theory narrative, which links growth to prosperity. The classical economic growth theory addresses ‘capital accumulation, greater division of labour, technological progress and trade’,⁹ and is premised on the belief that ‘development would effectively replicate the experience of those countries which had already industrialised during the 19th century’.¹⁰ In other words, development actors such as aid agencies believed ‘that the same processes of industrialisation that brought economic growth to Europe would bring growth and modernization to developing nations’.¹¹ External development assistance was aimed at accelerating organic processes of development through the transfer of resources, expertise and institutions from ‘developed’ countries to ‘developing’ ones.

The post-WWII conception of development was shaped by theories of modernization, with particular emphasis on socio-cultural change: ‘[p]reoccupations with growth, modernization and structural change were the tributaries’ that shaped the ‘meaning and purpose of development in the developing world in the immediate post-war years’.¹² Although the Truman doctrine might be perceived as overambitious, it did influence how developing

⁸ Bernstein, H. (1971). ‘Modernization Theory and the Sociological Study of Development.’ *The Journal of Development Studies*, 7(2): 141-160, 142.

⁹ Escobar, *Encountering Development*, 75.

¹⁰ Ingham, B. (1993). ‘The Meaning of Development: Interactions between “New” and “Old” Ideas.’ *World Development*, 21(11): 1803-1821, 1803.

¹¹ Rondinelli, D.A. (1983). *Development Projects as Policy Experiments: An Adaptive Approach to Development Administration*. London and New York, Methuen, 25.

¹² Leftwich, A. (2000). *States of Development: On the Primacy Politics in Development*. Cambridge, Polity Press, 40.

countries approached development. It focused on creating the conditions necessary for developing countries to achieve ‘high levels of industrialization and urbanization, technicalisation of agriculture, rapid growth of material production and living standards, and the widespread adoption of modern education and cultural values’.¹³ For instance, in southern Africa, the ‘dominant views on agriculture development have been based, implicitly or explicitly, on a modernization narrative’.¹⁴

Similarly, the British Solomon Islands government during the post-WWII years encouraged Solomon Islanders to participate in agricultural development by introducing rice, cocoa and other cash crops. They also established an Agricultural and Industrial Loans Board for credit access, and created cooperatives to facilitate self-sustaining commercial development in rural areas. The intention behind these developments was to create broad conditions conducive for facilitating socio-cultural change through the modernization of agriculture.

Efforts to stimulate development in Solomon Islands through land law reform were influenced by evolutionary ideas of social change to which key actors such as Colin Allan (see Chapter 5) and Peter Brett had been exposed through academic training and experience in other colonies. These ideas drew on the modernization narrative that influenced developing countries such as Solomon Islands to consider law as a tool to create social change through land reform.¹⁵ The focus of the law and development discourse of the 1960s and 1970s was

¹³ Escobar, *Encountering Development*, 4.

¹⁴ Cousins, B. and Scoones, I. (2010). ‘Contested Paradigms of ‘Viability’ in Redistributive Land Reform: Perspectives from Southern Africa.’ *The Journal of Peasant Studies*, 37(1): 31-66, 33.

¹⁵ Chua, A.L. (1998). ‘Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development.’ *The Yale Law Journal*, 108(1): 1-107; Trubek, D.M. (1996). ‘Law and Development: Then and Now.’ *American Society of International Law*, 90: 223-226; Burg, ‘Law and Development’.

on the state as the driver of economic growth.¹⁶ In Solomon Islands the state would come to play the central role in driving development through land law reform.

The motivation behind successive post-war attempts at land law reform was not only social and economic but also political. It was not until the 1960s that Solomon Islanders began to actively participate in formal governance processes and started to engage in the debate on customary land and development. This followed the formation of the Legislative Council under the British Solomon Islands (Constitution) Order in Council 1960. The Order provided for the Legislative Council to be comprised of the High Commissioner and twenty-one members, eleven of whom were expatriate Public Service officers, identified as the ‘official members’; the remaining ten (the ‘unofficial members’) consisted of four non-administration expatriates and six Solomon Islanders. The High Commissioner was President of the Legislative Council, and of a smaller Executive Council, two members of which were Solomon Islanders. The first election for the Council was held in 1964, and saw Solomon Islanders elected with the authority to participate in law-making processes for the first time. The Legislative and Executive Councils were replaced by a single Governing Council with a committee system under the British Solomon Islands (Constitution) Order in Council 1970.¹⁷

¹⁶ Sherman, F.C. (2009). ‘Law and Development Today: The New Developmentalism.’ *German Law Journal*, 10(9): 1257-1273.

¹⁷ For discussion on the constitutional changes during the 1960s and 1970s see: Paia, W.A. (1975). ‘Aspects of Constitutional Development in Solomon Islands.’ *The Journal of Pacific History*, 10(2): 81-89; Saemala, F. (1982). ‘Solomon Islands: Uniting the Diversity.’ In Crocombe, R. and Ali, A. (eds), *Politics in Melanesia*. Suva, Institute of Pacific Studies, USP, 64-81; Kabutaulaka, T.T. (2008). ‘Westminster meets Solomons in the Honiara riots.’ In Dinnen, S. and Firth, S. (eds), *Politics and State Building in Solomon Islands*. Canberra, ANU ePress, 96-118; and Moore, C. (2010). *Decolonising the Solomon Islands: British Theory and Melanesian Practice*. Melbourne, Alfred Deakin Research Institute, Deakin University.

I argue here that the land law reform attempts in Solomon Islands during the post-war era and after Independence constituted one long historical trajectory, centered on creating the legal apparatus and institutions for development. Particular actors played key roles during this long period in the advance of a Solomon Islands land reform agenda. During the late colonial era these individuals were colonial officials, mostly legal experts who were involved in providing technical advice or drafting land laws in other British colonies. This trend then persisted after Solomon Islands attained Independence in 1978. Although the changes to Solomon Islands land laws can be explained through a law and development discourse, I suggest these changes were also strongly influenced by key individual actors. I will examine the impact of these key actors during the late colonial era and after Independence to demonstrate how their roles and networks influenced Solomon Islands land law reform in terms of shaping the legal apparatus and processes for development.

6.3 Peter Brett

A key actor during the late colonial era was Peter Brett, born at Stoke Newington in London in 1918. A graduate of the University of London in 1939, with service in Europe and West Africa from 1940-46, he became legal assistant in the Office of the Treasury Solicitor, London until 1951. He was then appointed senior lecturer in law at the University of Western Australia, moving in 1955 to the University of Melbourne where he became the first Hearn Professor of Law in 1963 and Professor of Jurisprudence in 1964. Brett's research and teaching interests revolved around criminal law, evidence, administrative law and legal philosophy.¹⁸ There was little in his background or expertise that was related to land, and yet

¹⁸ Waller, L. (1993). 'Brett, Peter (1918-1975).' *Australian Dictionary of Biography*. National Centre of Biography, Australian National University.

he was engaged to work on land law in Brunei in 1952 and subsequently in Solomon Islands in 1957.

Brett was able to work in Brunei and then in Solomon Islands due to the association of the Dean of the University of Melbourne Law School, Zelman Cowen, with colonial officials in Brunei and Sarawak. Cowen was also the Dominion liaison officer with the British Colonial Office, assisting in the administration of British colonies as they moved to independence. This included the establishment of law schools in Hong Kong, Ghana and the West Indies. In 1953, Cowen visited Borneo and Malaya on behalf of the British Colonial Office to identify key areas requiring technical support, and then recruited technical personnel from Australia to deliver that support.¹⁹ This opened particular opportunities for Brett. In early 1956 Cowen visited Brunei, on the north-west coast of Borneo, where the Acting State Treasurer asked Cowen to recommend someone expert in law from Australia to undertake the task of revising these land laws. Cowen suggested the Brunei Government meet the travel costs, and proposed that the University of Melbourne law school would undertake the task free of charge as a contribution to Australia's share in the Cooperative Economic Development in South and Southeast Asia referred to as 'The Colombo Plan'.²⁰ Under the Colombo Plan, Australia provided education assistance to countries in South and Southeast Asia.²¹ The role and transfer of legal education would come to be seen as crucial to the first

¹⁹ Cranston, R. (2015). 'Cowen, Sir Zelman (1919-2011).' *Oxford Dictionary of National Biography*. Oxford, Oxford University Press.

²⁰ Mr Brett's Visit (Faculty of Law Melbourne University) and Revision of Land Legislation, B.S.I.P., 6 December 1957: University of Auckland Special Collection (Hereinafter UASC), WPHC 16/II/188/1/45.

²¹ Cuthbert, D., Smith, W., and Boey, J. (2008). 'What Do We Really Know About the Outcomes of Australian International Education? A Critical Review and Prospectus for Future Research.' *Journal of Studies in International Education*, 12(3): 255-275; see also Lowe, D. (1994). 'Percy Spender and the Colombo Plan 1950.' *Australian Journal of Politics and History*, 40(2): 162-176.

law and development moment in the 1960s.²² It was on this basis that the technical legal skills of lawyers like Brett was sought.

The Brunei Government accepted Cowen's offer in February 1956, and Brett was engaged to revise the Brunei land laws. He immediately flew to Brunei for discussions with senior Brunei government officials. After making plans for the drafting of the new land code, Brett flew to Singapore to get a plane back to Melbourne. On the way he stopped over at Kuching in Sarawak to discuss his plans briefly with Sir Anthony Foster Abell, the Governor there, who was also the High Commissioner for Brunei.²³ While at Kuching, Brett met with Frederick Kitto, who had been a surveyor from 1933 and then Director of the Lands and Survey Department in Sarawak until he was appointed Commissioner of Lands, British Solomon Islands Protectorate from September 1956-1958.²⁴ It was this meeting that ultimately led to Brett's appointment to the role in Solomon Islands. I would argue that Brett played the role of a central actor in this meeting by becoming the obligatory passage point in the actor-network association with the Governor and Kitto. Through this association Brett was able to make Kitto aware of and persuaded of the need for his land law reform work in

²² Trubek, D.M. (1972). 'Toward a Social Theory of Law: An Essay on the Study of Law and Development.' *The Yale Law Journal*, 82(1): 1-50; Harrington, J.A. and Manji, A. (2003). 'Mind with Mind and Spirit with Spirit': Lord Denning and African Legal Education.' *Journal of Law and Society*, 30(3): 376-399; Tamanaha, B.Z. (2011). 'The Primacy of Society and the Failures of Law and Development.' *Cornell International Law Journal*, 44(2): 209-247.

²³ Mr Brett's Visit (Faculty of Law Melbourne University) and Revision of Land Legislation, B.S.I.P., 6 December 1957: UASC, WPHC 16/II/188/1/45. Sarawak had historically been under the rule of the Sultan of Brunei, before the era of Brooke rule from 1841 to 1946, and then British colonial rule from 1946-1963: Ngidang, D. (2005). 'Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak.' *Southeast Asian Studies*, 43(1): 47-75.

²⁴ For a brief history of Kitto's life and work see: 'Collection Level Description: Papers of Fredrick Richard. K. Kitto.' Bodleian Library, University of Oxford. <http://www.bodleian.ox.ac.uk/dept/scwmss/wmss/online/blcas/kitto-frk.html>; see also British Solomon Islands. (1958). *Report for the Years 1955 and 1956*. Honiara, BSIP, 21.

Brunei. Consequently, when Kitto needed someone to do similar land reform work in Solomon Islands, Brett was the first person he sought to employ.

Brett's experiences in Brunei were crucial to his subsequent work in Solomon Islands in several respects. He worked with Brunei administrators to look into the nature of landholding arrangements and introduced a number of specific ideas in his drafting of the land code. First, Brett introduced perpetual and fixed term estates in an attempt to move away from the Western idea of freehold. Second, he introduced *pesaka* estates²⁵ based on Muslim law and Brunei Malay customary law, and partly upon ideas of tenure derived from early English land law, intended to curb land speculation.²⁶ This was an interesting hybrid of developmental assumptions about phased evolution in which conditions in early England were thought to broadly resemble those in contemporary Brunei, while emphasising respect for local norms. Third, the land code allowed *kampong* areas²⁷ owned by Brunei indigenous communities to continue in accordance with native custom. Finally, due to land fragmentation, Brett introduced a Torrens registration system that required landowning groups of more than five persons to register their land under five persons as joint owners upon a statutory trust. This idea of registering up to five persons as trustee was borrowed from the English land legislation of 1925 (see Law of Property Act 1925).²⁸

²⁵ This type of estate 'descends from its original owner to those entitled under the appropriate personal law to inherit from him, from generation to generation': Brett, P. (1957). 'North Borneo: Redrafting the Land Legislation of Brunei.' *The American Journal of Comparative Law*, 6(4): 565-577, 573.

²⁶ Brett, 'North Borneo', 573.

²⁷ Kampong area refers to a village area that is being used or occupied in accordance with the rules of custom.

²⁸ Brett, 'North Borneo'.

Brett's drafting of the land code was an attempt to address land issues specific to Brunei. It was intended to be a completely new land law rather than a statutory amendment of Brunei's existing legal system.²⁹ Brett's principal drafting role was supported by a committee that comprised Cowen and three academics from the Melbourne Law School. This committee examined the draft and made comments that contributed to shaping the final draft of the Land Code.

There was a careful selection of terminology used in the Code in order 'to avoid in certain contexts the use of terms or phrases which might have 'overtones' of English law and thus by implication bring the ideas of the English real property legal system into the Code'.³⁰ But, as envisaged by Brett, the Code would 'work successfully only if it is administered, at any rate at the outset, by officials of the highest grade, who are adequately remunerated and who devote themselves largely, if not exclusively, to the task of familiarising themselves with the new law and making it work'.³¹ Although the Brunei Government considered the draft land code to be an excellent job, it was never adopted, due to a lack of local capacity to apply the law.³² The Brunei experience demonstrates that no matter how well land laws were drafted, their enactment depended very much on the local context, state capacity and resources.

²⁹ Explanatory Memorandum: Re Draft Land Code for Brunei: University of Melbourne Archives (hereinafter UMA), Brett, Peter (1918-1975), Group 1: 1/1/2.

³⁰ Explanatory Memorandum: Re Draft Land Code for Brunei, 1.

³¹ Explanatory Memorandum: Re Draft Land Code for Brunei.

³² Brunei Commissioner of Lands letter to Cowen, 8 January 1966: UMA, Brett, Peter (1918-1975), Group 1: 1/2/2.

Kitto was interested in employing Brett to draft new land law for Solomon Islands to implement recommendations from Colin Allan's Special Lands Commission Report (see Chapter 5). In November 1956, Kitto mentioned this appointment in a letter to the Attorney General of Sarawak and the Resident Commissioner of Brunei. Kitto knew both of these colonial officials from his previous work in Sarawak and they had come across Brett's work in Brunei. In his letter to the Attorney General, Kitto explained: 'I am up to my old tricks again and it appears that very shortly we shall have to enact new legislation for British Solomon Islands again'.³³ The Attorney General of Sarawak expressed his view that Brett did an 'extremely competent job in drafting the Brunei Land Code' and that he had 'adopted a number of registration provisions for Sarawak'.³⁴ The communication between Kitto, the Attorney General of Sarawak and the Resident Commissioner of Brunei was shaped by an actor-network association, which provided an opportunity for Kitto to find out a bit more about Brett's work. It also demonstrates that, through a network, references to Brett's past work experience could be cross-checked to determine his degree of competency.

Towards the end of 1956, Kitto contacted Cowen to enquire whether Brett would be interested in undertaking similar work in Solomon Islands. This invitation was a direct consequence of the correspondence between Kitto and the Attorney General of Sarawak, as well as Brett's direct encounter with Kitto in Sarawak. I argue that Kitto's interest in recruiting Brett to do similar work in Solomon Islands was not because the information about Brett was necessarily true but rather that Kitto was persuaded it was true. This was because

³³ Frederick Kitto to the Attorney General of Sarawak, 16 November 1956: Bodleian Library Special Collection (hereinafter BLSC), Papers of Frederick Richard K. Kitto, 1950-1959.

³⁴ Frederick Kitto to the Attorney General of Sarawak, 16 November 1956.

it was people that Kitto knew at a personal and professional level who spoke highly of Brett's work in Brunei, and their views sufficed as a recommendation.

Kitto considered land law reform crucial for Solomon Islands because there was 'difficulty in obtaining a clear picture of the general guiding principles for future development with regard to land matters'.³⁵ Following initial discussions with Cowen and Brett, Kitto pointed out that he envisaged the land reform work would 'enable the Government to obtain a clear picture of the rights of the natives and so help them to decide to what extent the usual methods of economic development of backward countries can be set in motion by legislation'.³⁶ Kitto's perspective was evidently shaped by his prior work in Sarawak where land adjudication had been introduced in the 1930s.³⁷ Following the establishment of British colonial rule there in 1946, the emphasis on colonial policy had been on 'economic change through the exploitation of natural resources',³⁸ a perspective which resonated strongly with the modernization narrative prevalent at the time.

6.4 Actors and New Land Law

While previous scholars have examined aspects of land reform in Solomon Islands,³⁹ I have suggested that a focus on key actors within this process may help to explain why certain legal

³⁵ Commissioner of Lands to Brett, 24 June 1957: UMA), Brett, Peter (1918-1975), Group 1: 1/1/3.

³⁶ Commissioner of Lands to Brett, 24 June 1957.

³⁷ Ngidang, 'Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak'.

³⁸ Kaur, A. (1998). 'A History of Forestry in Sarawak.' *Modern Asian Studies*, 32(1): 117-147, 120.

³⁹ Heath, I.C. (1981). Land Policy in Solomon Islands. Victoria, La Trobe University, PhD Thesis; see also Larmour, P. (1984). 'Solomon Islands: Customary Land Registration Policy.' In Acquaye, B. and Crocombe, R. (eds), *Land Tenure and Rural Productivity in the Pacific Islands*. Suva, Institute of Pacific Studies, 68-96.

concepts and principles, rather than others, were introduced. In this section I discuss Brett's work in Solomon Islands to show how he played a central role in influencing the making of the Solomon Islands Land and Titles Ordinance 1959. I argue that his background as a lawyer and his experience in drafting the Brunei land code informed how he approached his work in Solomon Islands. I will show how the influence of ideas from Brunei and elsewhere shaped the making of the new land law in Solomon Islands.⁴⁰ Brett played a central role in the land reform process and, following Ambreena Manji, I would argue that it was the 'efforts of key individuals' such as Brett that 'have ensured that legal solutions have been sought for the problems of land relations' in Solomon Islands.⁴¹

6.4.1 Actors and Moves

Brett agreed to play a central role in drafting the Solomon Islands land law of 1959, which I describe as the first significant attempt at land law reform. He was requested by Kitto, the Commissioner of Lands, to assess the land problems in Solomon Islands and come up with legal solutions to address them. Brett's first move was to secure the interest and respect of Kitto and others in the administration hierarchy. He did a desk-based review from Melbourne of relevant legislation and other government documents and reports supplied by Kitto. Based on this approach, Brett concluded that land problems in Solomon Islands were due to a lack of legal clarity, and that a new land law would be needed to solve this problem. Having this

⁴⁰ David Akin makes a similar argument in terms of how ideas were transmitted from Africa to Solomon Islands: Akin, D.W. (2013). *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*. Honolulu, University of Hawai'i Press and the Centre for Pacific Islands Studies.

⁴¹ Manji, A. (2005). 'Cause and Consequence in Law and Development: Bringing the Law Back In: Essays in Land, Law and Development by Patrick McAuslan (Review).' *The Journal of Modern African Studies*, 43(1): 119-138, 121.

in mind, he prepared ‘a draft scheme of such legislation’ while in Melbourne.⁴² The methodology used by Brett was very similar to that he had used in Brunei to diagnose their land problems and draft a land code. While this may have been appropriate in Brunei, it was problematic in Solomon Islands because a majority of the stakeholders consulted were state actors rather than the customary landowners who owned the majority of the land in Solomon Islands.

Brett’s proceeded to draft a skeleton outline of the proposed new legislation, from Melbourne as his laboratory, which was based on four principal points. First, the law should be clear so that any person could understand when reading it. Second, the law should provide for legal security by enabling the state to guarantee a person’s title to land. Third, there should be respect for custom and it should be allowed to continue and develop unless it hindered development. Finally, provisions in the new land law should be short and simple. These four principal points were similar to the principal drafting approaches on which Brett had relied on when he was drafting the Brunei land code. Most of the ideas outlined in the skeleton proposed land legislation were drawn from Brunei, with an emphasis on the creation of legal security for development. Brett’s legal drafting experience in Brunei clearly influenced how he approached drafting the skeleton land legislation for Solomon Islands.

Brett finally visited Solomon Islands from 26 August to 10 September, when he conducted consultations with stakeholders to enlist their support for the reforms. This included

⁴² The stakeholders with whom Brett met included the ‘Acting Chief Secretary, the Acting Attorney General, the Assistant Attorney General, the Commission of Lands and members of his department, the Crown Surveyor, the Chief Forests Officer, the Special Lands Officer, a number of Solomon Islanders and members of the Chinese Community’; Brett to the Western Pacific High Commissioner, 6 September 1957: UMA, Brett, Peter (1918-1975), Group 1/1/1.

discussion of the skeleton outline for the proposed new land legislation. A meeting was held on 6 September at the Chief Secretary's Office between Brett and government officials to discuss the skeleton outline. Those present included Colin Allan, the former Special Lands Commissioner (see Chapter 5), now Senior Assistant Secretary (Native Affairs), K. Kitto, Commissioner of Lands, and J.B. Twomey, a qualified surveyor from South Africa appointed as Surveyor of British Solomon Islands in 1953.⁴³ Together, they discussed various parts of the skeleton outline of the proposed new land legislation and made recommendations. The minutes of the meeting indicated that both Brett and Kitto played an influential role in the discussions on how the new land law should be drafted. This was not surprising because Brett was already familiar with most of the ideas since they were drawn from Brunei. Based on his own work experience in Sarawak, Kitto was already exposed to ideas on land administration and adjudication similar to those contained in the draft skeleton outline.

Following this meeting a report was submitted to the Western Pacific High Commissioner in Fiji outlining land problems in Solomon Islands such as the lack of legal title, lack of clarity about what laws should be used by courts to deal with land disputes, and the vast amount of waste land that was not properly regulated. The legal solution for these problems was the enacting of new land law, and here Brett played a central role by being on the ground and able to capture the interest of different colonial actors. Based on his prior experience in Brunei and his expertise in law he was able to persuade these actors that his draft skeleton outline of the proposed new land legislation was credible. The 6 September 1956 meeting

⁴³ For names of others who were present during this meeting see: Minutes of a Meeting Held in the Chief's Secretary Office on Friday 6 September 1957, to discuss the proposed New Land Legislation as drafted by Mr. P. Brett: UMA, Brett, Peter (1918-1975), Group 1: 1/1/1.

was crucial because it resulted in an agreement on key recommendations that the draft scheme for the new land law should consider. Another meeting was held on 9 September, where it was agreed by those officials present that Brett ‘should now proceed to draft legislation’.⁴⁴

Brett returned to Melbourne and drafted a new land law for Solomon Islands, which was completed on 23 October 1957. He sought assistance and advice from a committee comprising Cowen and three other law colleagues from Melbourne University Law School. The committee examined and commented on the preliminary draft legislation and then it was retyped and dispatched to the BSIP Commissioner of Lands.⁴⁵ One of the issues that Brett grappled with in drafting the new Solomon Islands land law was over the appropriate style of legal drafting. This was an ‘issue of legal methodology, and broadly speaking centres on the question of how much law to use’.⁴⁶ Brett’s approach was to draft a detailed new land law that set out the administrative powers and duties of ‘bureaucrats in the land administration machinery’ and outlined clear processes of land registration and adjudication associated with landholding arrangements in simple terms. His approach to the sort of legal methodology to be used to reform land law in Solomon Islands was evidently influenced by his experience and teaching administrative law at Melbourne University as well as his experience of drafting the Brunei land code.

⁴⁴ ‘Notes in Application of Minutes (In F.165/10/4) of the Discussion held at Government House on Monday 9 September 1957’: Brett to the Western Pacific High Commissioner, 6 September 1957: UMA, Brett, Peter (1918-1975), Group 1/1/1.

⁴⁵ Peter Brett to Commissioner of Lands Commissioner, 23 October 1957; see also ‘Commissioner of Lands to Chief Secretary, 20 November 1957’: UMA, Brett, Peter (1918-1975), Group 1/1/1.

⁴⁶ Manji, ‘Cause and Consequence in Law and Development’, 125.

Brett perceived the existing legal system in Solomon Islands as too complicated for the local context, because it contained words and terminology derived from English land law that had ‘evolved down the centuries from feudal origins in conditions totally different from those found’ in Solomon Islands.⁴⁷ Based on his initial desk-based review of documents such as the Allan Commission Report (see Chapter 5), he knew that landholders in Solomon Islands often lacked the training and skills required to fully understand the legal implications of land transactions. He therefore avoided English legal terminology when drafting the new land law. Instead, he carefully selected the terminology to be used and in some instances provided new terms with definitions. Brett explained that one object of the drafting was ‘to avoid in certain contexts the use of terms or phrases that would have “overtones” of English law and thus by implication bring the ideas of the English real property legal system into the Protectorate at points [where] they would not be welcomed’⁴⁸ by Solomon Islanders (note how closely Brett’s language in this passage followed that of the explanatory memorandum on his Brunei work). For example, in the draft legislation the term “charge security” was used in preference to “mortgage”; estates were created subject to “obligations” rather than “conditions”; and the term “joint ownership” was used instead of “joint tenancy”.⁴⁹ While these terminologies departed from the conventions of English real property law, they were still based on a western legal construction because they continued to promote the idea of land as property estates with exclusive rights.

⁴⁷ Simpson, S.R. (1976). *Land Law and Registration*. Cambridge, Cambridge University Press, 25.

⁴⁸ Brett’s Explanatory Memorandum: UMA, Brett, Peter (1918-1975), Group 1/1/1.

⁴⁹ Brett’s Explanatory Memorandum.

Brett later returned the new draft land law to Honiara, where it was examined by a committee of four, comprising Philip Neal Dalton (Attorney General), Colin Hamilton Allan (former Special Lands Commissioner, now Senior Assistant Secretary Native Affairs), David Robert Barwick (Assistant Attorney General), and Richard Keith Kitto (Commissioner of Lands). These officers had a wealth of experience based on their training, background and work as colonial administrators. The committee was formed based on directions from the Secretary of State, and the rationale for its small size was to avoid wasting valuable time on irrelevant discussions. The committee was given the mandate to consult any government officers or members of the public on any specific points relating to the draft legislation, before reporting to the High Commissioner. The committee met on 17, 20, 21 and 22 of January 1958 to consider the draft legislation. On 7 February 1958, the committee met with High Commissioner John Gutch to consider matters of principle in relation to the draft legislation. Comments and suggestions derived from these meetings were forward to Brett in Melbourne, who then amended and finalised the draft land legislation.⁵⁰ However, this final stage of drafting before it was enacted as law provided no opportunity for Solomon Islanders to express their views of the changes intended by the new land law.

6.4.2 Making of New Land Law 1959

The draft land law was enacted as the Land and Titles Ordinance 1959, repealing the Land Regulation of 1914 (Cap 49). The new land law changed freehold tenure and leasehold tenure by creating estates in land that private citizens could own either as a perpetual estate or a fixed term estate. The idea of such estates corresponded broadly to the idea of freehold or

⁵⁰ Memorandum: Mr. Brett's Draft Regulation: BLSC, Papers of Frederick Richard K. Kitto, 1950-1959.

leasehold as understood in English law. Brett had adopted the model of estates for landholding arrangements from his work experience in Brunei, preferring the term ‘estate’ over ‘freehold’ to avoid any suggestion that English law was being introduced.⁵¹ He applied essentially the same methods and terminology to his drafting work in Solomon Islands; as actors move from one colony to another they carry with them ideas that have been applied in their previous positions.

The other legal concept introduced by Brett through the new land law was the adjudication and registration of the title system. This abolished the system of deed registration, which had been identified in the Allan Commission report as failing to provide sufficient legal security of title to promote economic development.⁵² The difference between the two registration systems was that deed registration involved the registration of the document by which an interest in land was transferred, whereas title registration was the legal consequence of a transaction, the title itself being registered. The defect with deed registration is that it merely documents a land transaction rather than proving title. To address this defect, it was considered important that a registration of title be introduced in the new land law to enable the ascertainment of title to land as a fact.⁵³ The idea of registration was based on the Torrens introduced in South Australia in 1857, and later to other parts of the country.

⁵¹ Explanatory Memorandum: RE Draft Land Code for Brunei: UMA, Brett, Peter (1918-1975), Group 1: 1/2/1.

⁵² British Solomon Islands. (1965). *Report for the Years 1957 and 1958*, 24-25.

⁵³ Simpson, *Land Law and Registration*, 15.

It was proposed by Brett that the registration system should be part of the machinery of government as it was ‘essential for sound land administration’ and ‘a valuable administrative aid for land reform’.⁵⁴ This perspective was premised on the assumption that registration is a necessary component of good land administration, but neglects the challenges confronting a country such as Solomon Islands today due to issues of capacity and corruption. Corruption in the strict sense, such as the corrupt logging and mining deals struck by leaders or brokers of some landowning groups since the 1990s, hardly existed in Solomon Islands in the three decades after 1958.⁵⁵ The adjudication and registration system offered ‘a system of conveyancing which is complete in itself’.⁵⁶ The register of the title is managed and administered by the state, providing three safeguards, namely a clear definition of the parcel of land registered, the name and address of the owner, and particulars of any other interest enjoyed by another person. The legal effect of this is that the registered title is indefeasible and the registered owner would be protected from interests arising in any unregistered transaction.⁵⁷

Kitto appeared convinced that the Brunei Land Code offered a credible model for adoption by Solomon Islands. In a letter to Brett in July 1957 on the subject of leasing and improvements, Kitto pointed out that ‘my thoughts on the subject, naturally, are mainly based

⁵⁴ Simpson, *Land Law and Registration*, 3.

⁵⁵ For a background on logging in Solomon Islands see Kabutaulaka, T.T. (2006). ‘Global Capital and Local Ownership in Solomon Islands’ Forestry Industry.’ In Firth, S. (ed), *Globalisation and Governance in the Pacific Islands*. Canberra, ANU ePress, 239-257.

⁵⁶ Simpson, *Land Law and Registration*, 16.

⁵⁷ Agbosu, L.K. (1990). ‘Land Registration in Ghana: Past, Present and the Future.’ *Journal of African Law*, 34(2): 104-127.

on experience in Sarawak and to a much lesser extent on visits I paid to North Borneo'.⁵⁸ He explained in a letter to the Commissioner of Lands of Brunei in December 1957 that Solomon Islands would soon 'introduce new land legislation ... based on Mr. Brett's land code of Brunei, to supersede' the 'present outmoded legislation with its deeds system of registration'.⁵⁹ These interactions demonstrate how the Brunei and Sarawak experiences of Brett and Kitto contributed to shaping the land law reform in Solomon Islands. In other words, Brett and Kitto, based on their previous work experience brought with them views and legal concepts for how land law reform should operate in Solomon Islands.

Land adjudication and registration of title under the Land and Titles Ordinance 1959 was aimed at creating legal security to facilitate the economic development of land, particularly commercial agriculture. The debate on legal security became an issue in the aftermath of WWII, following the rise of the Maasina Ruru Movement, which David Akin argues was 'heavily engaged in building forward-looking social programs'.⁶⁰ Akin further points out that a key Maasina Ruru platform was that the movement would not permit land alienation. This was one of the targets of custom codification in the movement. A key slogan of the movement, particularly on Malaita, was that it would stand up against '99 years of oppression', referring to the land leases of that duration which the government had granted for decades.⁶¹ Fear of loss of land was also central to the Maasina Ruru movement in

⁵⁸ Kitto to Brett, 17 July 1957: BLSC, Papers of Frederick Richard K. Kitto, 1950-1959.

⁵⁹ Brett to the Commissioner of Lands of Brunei, 16 December 1957: BLSC, Papers of Frederick Richard K. Kitto, 1950-1959.

⁶⁰ Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*, 11.

⁶¹ Akin, D. (2013). Akin, D.W. (2013). *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*. Honolulu, University of Hawai'i Press and the Centre for Pacific Islands Studies, 187.

Makira.⁶² Though the government reached a fragile peace with the movement in late 1952, there remained great suspicion of government intentions, particularly regarding land. These fears were still rife when Allan conducted his survey in the southeast, including among people he had tried to suppress, many of whom he had arrested and sent to prison. Despite this obvious history of resistance against land alienation, the government's proposal for land reform remained focused on changing alienated land into registered estates.

Many of the non-native plantations were established on land that had never been surveyed and the title for such land could potentially be upset by Solomon Islander claims based on customary land rights or prescription.⁶³ As a result, the state's attempts at land reform were aimed at creating procedures under the Land and Titles Ordinance to bring alienated land into a registered estate. The provisions under this new land law allowed voluntary applications for registration; authorised the Registrar of Titles to take the initiative to register land; and allowed for the registration of land dealings involving either freehold or leasehold interest to be registered within a limited time period. The intention of bringing alienated land into a registered estate was mainly to create legal security for investors who had acquired land from either the state or Solomon Islanders for plantation development.

Other legal concepts and processes introduced by Brett through the new land law included the conversion of customary land into a registered estate; the scope for application by an

⁶² Scott, M.W. (2007). *The Severed Snake: Matrilineages, Making Place, and a Melanesian Christianity in Southeast Solomon Islands*. Durham, Nth. Carolina, Carolina Academic Press; see also Akin, D. (June 2008). 'Review: The Severed Snake: Matrilineages, Making Place, and a Melanesian Christianity in Southeast Solomon Islands by Michael W. Scott.' *The Journal of the Royal Anthropological Institute*, 14(2): 461-462; Akin, D. (2013). Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*.

⁶³ Lands and Mines Annual 1955-1956. Report 1957: UASC, WPHC 16/II/165/3/8.

unincorporated group of more than five persons for the grant of an estate;⁶⁴ and the registration of land involving more than five people. These legal concepts and processes developed and introduced by Brett were transposed from England, Australia and Brunei. For example, the new Solomon Islands land law provided that in cases where not more than five persons owned a block of land and wanted it registered either some or all of them could be registered as the joint owners on trust. If the number of persons was more than five they could appoint between three to five persons to be registered as joint owners on trust, and a “Trust Declaration” document would need to be signed by the landholding group. These rules were framed along lines similar to the English land legislation of 1925 and were initially transposed by Brett to Brunei when he was drafting their land code. From Brunei, these rules were transferred and translated by Brett to become part of Solomon Islands new land law. The transfer and translation of these rules to Solomon Islands was part of the global flow of ideas and people from one colony to the next.

Brett’s focus on detailed land law as a suitable approach to the challenges of land reform in Solomon Islands is evident in the ways in which the new land law regulated the two formal state institutions authorised to administer and grant estates in land to private citizens or investors for development. The first of these was the position of the Commissioner of Lands, who had the authority to administer registered land in the Protectorate. The second was the Land Trust Board, modelled on the Fiji Trust Board, which was established to facilitate development. But the Fijian model was linked to the Great Council of Chiefs, a neo-traditional institution established to govern Fijian affairs, which selected members of the trust

⁶⁴ Section 34, Land and Titles Ordinance 1959.

board. The Fiji Trust Board was a state-sanctioned institution created to administer native land in Fiji, whereas the Solomon Islands Land Trust Board was established to grant estates in alienated land, bringing areas of vacant land with economic potential under government control. The new land legislation vested greater responsibilities in the Commissioner of Lands and the Registrar to deal with land matters in Solomon Islands. Despite a detailed land law legal apparatus that provided administrative checks and balances, the issues of capacity and the regulation of actors responsible for making these systems and institutions work remained an ongoing challenge.

6.4.3 Amending the New Land Law in the 1960s

The new land law drafted by Brett was enacted in 1959 but its implementation was achieved only incrementally thereafter; for example, the Land Trust Board was not set up until May 1961.⁶⁵ By this time, Brett was no longer present to maintain the support and interests of different actors for the land law he had introduced. Kitto, the Commissioner of Lands, as another vital force behind the new land law, had also left Solomon Islands at the end of 1958 and returned to settle in Sarawak. The one actor still present from the era of Brett and Kitto was Twomey, who eventually became Commissioner of Lands. The Commissioner of Lands who succeeded Kitto was T.D.H. Morris. Morris wrote to D.T. Lloyd, the Director of Lands, Mines and Survey of Fiji in December 1960 expressing his views about the registration procedure set out in the new land law. Lloyd replied suggesting that Morris arrange for an officer from Fiji to travel to Solomon Islands to set up the office dealing with registration.

⁶⁵ Public Notice 11/63, Land and Titles Ordinance 1959, Land: B.S.I.P. Land & Titles Legislation: Adjudication. 1960-1966: UASC, WPHC 28/1/219/2/20 Vol. II.

The alternative was for Morris to send an officer to Fiji to observe how their registration system was applied in practice. Lloyd further suggested that whichever option was adopted, it was best to write to S.R. Simpson, a land tenure specialist in the Legal Department of the Colonial Office, for advice because ‘Simpson was in Fiji for two weeks in 1959 and got to know the system well’ and had also engaged in land work in Africa.⁶⁶

Simpson was also aware of the land problem in the Solomons because Allan had previously sought his advice and subsequently maintained a professional connection with him. In addition, Kitto, while Commissioner of Lands, had forwarded Simpson a copy of the new land law in 1958. Stanhope Rowton Simpson (1903-1999) had a legal background in law from Cambridge. He joined the Sudan Political Service in 1926, rising from Assistant District Commissioner to the position of Commissioner of Lands and Registrar General (from 1945 to 1953).⁶⁷ After his retirement from Sudan he became land tenure advisor in the Colonial Office and the Ministry of Overseas Development,⁶⁸ which provided him with the opportunity to become involved in land law reform work in countries in Africa and elsewhere, such as Papua New Guinea.⁶⁹ This placed him in a unique position to make policy

⁶⁶ D.T. Lloyd to T.D.H. Morris, 30 January 1961: Lands: B.S.I.P Lands and Titles Regulation Implementation. 1958-1965: UASC, WPHC 28/1/219/2/3 Vol I.

⁶⁷ Berry, T. (2000). ‘Stanhope Rowton Simpson C.B.E.’ *Greater Wigston Historical Society, Bulletin* 56. Leicestershire, England. < <http://wigstonhistoricalsociety.co.uk/GWHS%20Bulletin%2056.pdf> > (Accessed 12/7/2015).

⁶⁸ Coldham, S. (1981). ‘Review of S. Rowton Simpson ‘Land Law and Registration’.’ *Journal of African Law*, 25(1): 45-46, 45.

⁶⁹ Simpson has written extensively on his involvement in land law reform work in Africa and elsewhere. See for example: Simpson, S.R. (1967). ‘New Land Law in Malawi.’ *Journal of Administration Overseas*, 6(4): 221-228; Simpson, S.R. (1971). ‘Land Problems in Papua New Guinea.’ In Ward, M.W. (ed), *Land Tenure and Economic Development: Problems and Policies in Papua New Guinea and Kenya*. New Guinea Research Bulletin No. 40. Canberra, The Australian National University, 1-36.

suggestions based on his own experience, and to influence how the new land law in Solomon Islands should be implemented or further revised.⁷⁰

The new land legislation was brought into full operation in early 1963, but the implementation of key provisions in the new land legislation proved impractical and far from satisfactory.⁷¹ The large area of land under alienation was attracting a negative response from Solomon Islanders, and was becoming an increasingly heated issue. Solomon Islanders were already suspicious about land issues, making it difficult to lease new land for development. Given this context, it was politically challenging for the Land Trust Board to declare customary land as vacant and acquire it for development under the Land and Titles legislation. Local councils and churches were unable to negotiate with customary landowners to acquire title to customary land because of requirements under the new law for landowners to register their land before they could transfer the registered title. The new land law was considered problematic not only in its application but also because the state lacked the capacity and resources to implement it.

Andrew Graeme Cross, an administrative officer was employed as the adjudication officer and appointed as the Lands Department Registrar of Titles in 1963 to implement parts of the new land law.⁷² Cross had worked in the UK colonial administration in the Gold Coast, West

⁷⁰ Simpson was described as ‘a man with an encyclopaedic knowledge of land tenure problems and policies in many parts of the world’: Healy, A.M. (1971). ‘Land Problems and Land Policies in Kenya and Papua New Guinea: A Comparative Historical Perspective to 1963.’ In Ward, M.W. (ed), *Land Tenure and Economic Development*, 95.

⁷¹ Cross, A.G. (1969). ‘Land Legislation in BSIP,’ Waigani Seminar, enclosed in PMB 1189/148 Reel 4.

⁷² Cross was appointed as the Registrar of Titles under the Land and Titles Ordinance.

Africa (now Ghana) before being transferred to the British Solomon Islands Protectorate. He was described as an ‘excellent administrator, thoughtful, systematic, meticulous and absolutely honest, while also being an astute negotiator’.⁷³ Cross was part of the global flow of actors who brought with him experience and ideas from Africa to shape his work in Solomon Islands.

One of Cross’s first tasks was sorting out an application for the grant of perpetual estate in customary land at Kira Kira, in the Eastern District of Solomon Islands. He discovered that the procedure for granting guaranteed title in customary land as a registered estate only provided for the registration of ownership rights. Other forms of interest that were secondary in nature were not recognised under this process. In addition, the application of the land adjudication process was rigid, judicial in nature and allowed for any landowner to ask for registration of their land.⁷⁴ This was considered problematic because the state lacked the capacity to attempt a nation-wide registration, and the focus was thus on bringing into the register only those customary land areas identified as suitable for economic development.

The limitations in the new land legislation discovered by Cross could be traced to Brett’s drafting style, which was influenced by his background as a lawyer and academic, as well as a recommendation from the committee that examined the legislation when it was in draft form. The Solomon Islands land law echoed the process described in Sudan’s Land Settlement and Registration Ordinance 1925 which, ‘in its essentials’, had then been

⁷³ Tony Hughes, email correspondence 25 November 2015.

⁷⁴ Hughes, A.V. (1970). ‘Tenure Conversion in the Solomon Islands 1965-1969.’ *Waigani Seminar*, enclosed in PMB 1189/148 Reel 4; see also Hughes, A.V. (1970). ‘Tenure Conversion in the Solomon Islands (1965-1979).’ *South Pacific Bulletin*, 20(1): 41-47.

introduced into Palestine in 1928, and later into Jordan and to Sarawak in 1932.⁷⁵ From Sarawak, the process was introduced by Brett to Solomon Islands land law, presumably with the knowledge and support of Kitto, as Commissioner of Lands, who had himself also worked in Sarawak.

Although Cross identified defects in the new land law he did not contact individual experts, and I suggest that this was because of his position as an adjudicating officer. Instead it was the High Commissioner who arranged for Cross to meet experts like Simpson. The High Commissioner wrote to the Secretary for Technical Cooperation on 30 September 1963, requesting that the Colonial Land Technical Advisor, S. Rowton Simpson, meet with Cross while the latter was on vacation leave in Britain to discuss land problems in Solomon Islands under the new land law. The meeting between Simpson and Cross took place on 5 December 1963. On his way back from Britain, Cross was instructed to visit Sarawak to study its original Ordinance and the subsequent modifications made to it, including the Sarawak Land Code 1958.⁷⁶

The discussion that Cross had with Simpson, as well as his visit to Sarawak, convinced him that the legal solution to the land problems he encountered in the field as an adjudicating officer was to advocate for yet another round of land law reform. He made a number of recommendations including developing ‘entirely different procedures for the grant of

⁷⁵ Simpson, ‘New Land Law in Malawi’, 222.

⁷⁶ Bulan, R. (2005). ‘Native Customary Land: The Trust as a Device for Land Development in Sarawak.’ In Cooke, F.M. (ed), *State, Communities and Forests in Contemporary Borneo*. Canberra: Australian National University, 45-64.

negotiable titles in respect of native customary land'.⁷⁷ Cross and Simpson both agreed that the process under the new land law that promoted sporadic adjudication was not exactly the same as the process of systematic adjudication in Kenya and Sarawak, which was the system recommended by Allan in the Special Lands Commission Report (Chapter 5).⁷⁸ Simpson was in favour of systematic adjudication and it was perhaps his influence that had convinced Allan to recommend this process in the Commission Report; in any event, Simpson convinced Cross to pursue a process of systematic adjudication.

Twomey, as the Chief Surveyor (who later replaced Morris as Commissioner of Lands from 1965), supported the recommendation for amending provisions of the new land law dealing with procedures for creating estates from customary land. Simpson provided advice on the style of redrafting and what legal ideas should be used. Informed by his African experience, Simpson recommended elements of land adjudication taken from the Kenyan legislation and the revised Land Adjudication Bill of Sarawak for adoption in Solomon Islands.⁷⁹ These ideas on land adjudication and registration were introduced in the Land and Titles (Amendment) Ordinance 1964. But a trial implementation by the Lands Department in 1964 of these additions suggested that still further amendments were required. According to Simpson, it was necessary to translate the amended law into 'a reasonable workable statute'.⁸⁰ This resulted in another set of amendments, referred to as the Land and Titles (Amendment)

⁷⁷ Land: B.S.I.P. Land & Titles Legislation: Adjudication. 1960-1966: UASC, WPHC 28/1/219/2/20 Vol. II.

⁷⁸ Extract from letter dated 5 February 1964 from A.G Cross to G. Wyn Jones. Land: B.S.I.P. Land & Titles Legislation: Adjudication. 1960-1966: UASC, WPHC 28/1/219/2/20 Vol. I.

⁷⁹ Heath, *Land Policy in Solomon Islands*, 323.

⁸⁰ Simpson, *Land Law and Registration*, 460.

1965, which provided for further land tenure improvements and provisions for the acquisition of interest in registered land by adverse possession. The amendments were drafted with the advice of Simpson.⁸¹ Partly due to his experience, and no doubt also in deference to his position in the Legal Department of the Colonial Office, Simpson was an influential and persuasive individual who was able to transpose his ideas from one colony to another.

The amendments were extensive and largely procedural, producing a hybrid Ordinance with the primary objective of accelerating the registration of land for development; but it still had numerous defects that required further revision.⁸² As a result, Simpson recommended a complete revision and consolidation of the Land and Titles Ordinance 1959 with subsequent amendments. Ian Ernest Morgan, an Englishman who had been Registrar of Titles in Kenya, was responsible for doing this work in 1967. He had played a leading role in the preparation of the Kenya Registered Land Act of 1963,⁸³ which provided for a system of law that regulated the process of land adjudication to convert customary land into a registered estate and land already subject to pre-existing registration system.⁸⁴ Simpson, who had known of Morgan's key role and technical expertise in preparing the Kenya land legislation, recommended him as the appropriate person to review and consolidate Solomon Islands existing land law. Morgan prepared a draft Bill and passed it to a Select Committee of the Legislative Council for consideration. The aim of the draft Bill was to improve and reorganise

⁸¹ Twomey's discussion, Wednesday 13 December 1967: B.S.I.P Legislative Council Debates Official Report, 8-9 Session, 1967/68,

⁸² Simpson, *Land Law and Registration*, 460.

⁸³ Simpson, *Land Law and Registration*, 460.

⁸⁴ For a detailed analysis of the Kenya Registered Land Act of 1963 see: Kagagi, D.N. (1991). *The Law and Practices of the Registered Land Act of 1963: A Comparative Study*. University of Leeds, PhD Thesis.

the existing land law rather than effecting ‘changes of substance’.⁸⁵ The draft Bill was passed into law in 1968 as the Land and Titles Ordinance 1968 and was brought into effect on 1 January 1969.⁸⁶

The Land and Titles Ordinance 1968 was reorganised into a coherent framework, tidying up irregularities in relation to settlement of unregistered documentary titles as well as ‘settlement and registration of interest in land’.⁸⁷ ‘The basic scheme of land registration and registered land tenure’ that included the concept of estates remained unchanged.⁸⁸ Other parts of this legislation provided ‘for the organisation and operation of a registry of title following closely the Kenya Registered Land Act 1963’.⁸⁹ The registration of customary land under a statutory trust, with between three to five persons appointed as representatives, remained as envisaged by the principal legislation.

Daniel Fitzpatrick describes this as the agency method, which was simple because any potential investor could deal directly with the group representative.⁹⁰ The group representative would have the authority to deal with any internal conflicts in the first instance while the state provided an avenue for the right of appeal. But, as Fitzpatrick points out, the agency method has considerable disadvantages, as it could easily be abused by group

⁸⁵ British Solomon Islands. (1968). *Report for the Year 1967*. Honiara, BSIP, 26.

⁸⁶ Simpson, *Land Law and Registration*, 460.

⁸⁷ Cross, ‘Land Legislation in BSIP’.

⁸⁸ British Solomon Islands. (1969). *Report for the Year 1968*. Honiara, BSIP, 26.

⁸⁹ Simpson, *Land Law and Registration*, 460.

⁹⁰ Fitzpatrick, D. (2005). ‘Best Practice Options for the Legal Recognition of Customary Tenure.’ *Development and Change*, 36(3): 449-475, 459.

representatives who fail to act in the best interests of their members.⁹¹ This is true in the case of Solomon Islands where representatives who were supposedly required under the land legislation to represent their land owning group as trustees often abused their powers for personal gain. Despite these disadvantages in the agency method, it seemed Simpson had no objection to its introduction in Solomon Islands land legislation. He was familiar with the agency method because he had applied it himself in his work in various African countries. For example, the Registered Land Act 1965 for the Federal Territory of Lagos contained similar provisions, which Simpson proposed as a 'suitable model for the registration of group ownership in other parts of the world'.⁹²

Simpson suggested that the 1968 Ordinance offered 'not only a working example of the provisions of the Registered Land Act but also of systematic adjudication'. Here he largely assumed that what had worked in Africa could be transplanted to other countries. Peter Larmour describes the legal transplant as an institutional transfer from Africa to Melanesia,⁹³ whereby systematic adjudication 'originated in the colonial Sudan, and was taken up in Kenya, from where it was transmitted' to Melanesia in the 1960s by Simpson and Morgan, whose careers in the colonial system had intersected in Kenya.⁹⁴ While I agree with Larmour, I would argue that the passage of legal ideas to Solomon Islands was not simply a linear transfer from Africa, as the Southeast Asian experiences of Brunei and Sarawak were also

⁹¹ Fitzpatrick, 'Best Practice Options for the Legal Recognition of Customary Tenure', 460.

⁹² Simpson, *Land Law and Registration*, 232.

⁹³ Larmour, P. (2005). *Foreign Flowers: Institutional Transfer and Good Governance in the Pacific Islands*. Honolulu, University of Hawai'i Press.

⁹⁴ Larmour, P. (2002). 'Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia.' *Public Administration and Development*, 22(2): 151-161, 155.

relevant to the discussion of legal transplant to Solomon Islands. This demonstrates that the transfer of legal ideas between colonies is fundamentally shaped by the process of translation through particular actor-network associations.

6.5 Land Reform 1960s-1970s

The drafting of the new land Bill to amend the existing land legislation was completed in London under the guidance of land experts such as Simpson before it was returned to Solomon Islands; there it was examined and revised by the Lands Department and a Select Committee chaired by Commissioner of Lands Twomey. Twomey explained provisions of the Bill to members of the Select Committee, persuading them to support it. In due course, as revealed by the Legislative Council's Hansard report, 'when Twomey introduced the Bill the Elected Members expressed their general satisfaction with it'.⁹⁵ The Bill, referred to as the Land and Titles Ordinance 1968, was passed by the Legislative Council and came into effect in January 1969.⁹⁶ This revised and consolidated land law 'retained the new tenorial terms' such as perpetual and fixed terms that were first introduced in the Land and Titles Ordinance No. 13 of 1959.⁹⁷ It reenacted the land adjudication and registration process of the

⁹⁵ British Solomon Islands Information Service. (1968). 'Special LegCo Edition: The First Meeting of the Ninth Session of the Legislative Council.' *B.S.I.P News Sheet Nos. 11*, 15 June, 2.

⁹⁶ British Solomon Islands Information Service. (1968). 'Land and Titles Ordinance 1968.' *B.S.I.P News Sheet Nos. 17/18*, 30 September, 6.

⁹⁷ Twomey, J.B. (1970). 'Land Tenure Systems in the Western Pacific High Commission Territories: A Comparative Study.' *Journal of Administration Overseas*, 9(2): 96-109, 102-103.

previous land law but with ‘many improvements’ recommended by Simpson based on ‘study experience in other developing countries with similar problems’.⁹⁸

The Land and Titles Ordinance 1968 provided the legal framework for converting customary land tenure into registered estates. Motivating this land law reform approach was the view that customary land tenure was ‘uncertain, does not provide security and protection against disputes, could not be used as security for development loans and has no secure title to leave to one’s children’.⁹⁹ As previously noted, this approach, which accorded closely with modernization theory, sought ‘to explain the disparities between western and non-western societies and to chalk out road maps for modernizing or developing the latter’.¹⁰⁰ From the 1950s, the dominant British narrative in East Africa was ‘that the modernization of customary land’ through adjudication and registration would create benefits for local people.¹⁰¹ The colonial authorities envisaged that by providing these benefits, African agriculture would be free to develop.

Key actors such as Simpson played a central role in spreading this modernization narrative to other colonies including Solomon Islands. Based on his African experience, Simpson insisted that ‘without security of tenure there is no incentive to develop or improve

⁹⁸ British Solomon Islands Information Service, ‘Land and Titles Ordinance 1968’, 6; see also Joan M. Herlihy: Papers relating to Provincial and Local Government in the Solomon Islands 1970s-1980s’, available at PMB 1190, Reel 13.

⁹⁹ Cross, ‘Land Legislation in BSIP’.

¹⁰⁰ Naidu, V. (2010). ‘Modernisation and Development in the South Pacific.’ In Jowitt, A. and Cain, T.N. (eds), *Passage of Change: Law, Society and Governance in the Pacific*. Canberra, ANU Press, 7-31, 10.

¹⁰¹ Anderson, T. (2011). ‘Melanesian Land: The Impact of Markets and Modernisation.’ *The Journal of Australian Political Economy*, (68): 86-106, 87-88.

agriculture techniques'.¹⁰² In other words, only through secured land tenure arrangements could economic development eventuate. This argument influenced the colonial government to introduce land law reform that had as its primary and over-riding objective the conversion of traditional land tenure to registered estates for economic development. Simpson developed the view that 'if good development is to be assured it must be possible for rights in land to be adjusted or transferred cheaply, quickly and with certainty'.¹⁰³ Simpson's view resonated with the dominant modernization narrative, which has contributed to shaping subsequent discussion around the adjudication and registration of land titles in Solomon Islands, focused almost entirely on security of tenure for economic development.

As a legal consultant for the Colonial Office, Simpson was an active transmitter of the tenure security narrative,¹⁰⁴ and in this he found strong support from colonial administrators in Solomon Islands. These administrators worked together in a network of association that had as one goal the promotion of tenure security. Tony Hughes, an English Administrative Officer who worked as Deputy Registrar of Titles and also Deputy Commissioner of Lands (1965-1970), made reference to this network in mentioning that he worked closely with Graeme Cross and Brian Twomey 'on devising methods of converting customary land rights to the registered title system that was embedded in the Land and Titles Act'.¹⁰⁵ He stated that world-wide experience indicated that security of tenure was 'necessary for intensive

¹⁰² Simpson, *Land Law and Registration*, 230.

¹⁰³ Simpson, *Land Law and Registration*, 10.

¹⁰⁴ For discussion of how forms of knowledge were transmitted by colonial officials see: Kothari, U. (2006). 'From Colonialism to Development: Reflections of Former Colonial Officers.' *Commonwealth & Comparative Politics*, 44(1): 118-136.

¹⁰⁵ Anthony Hughes, email correspondence 25 November 2015.

agriculture or economic development'.¹⁰⁶ But he also stressed that 'tenure conversion by itself has no meaning; it has meaning only as part of a process of social change'.¹⁰⁷ Twomey, who was promoted from Surveyor to Commissioner of Lands in 1965, argued that 'land must be made available for development by buying and selling of land if the economic development which this country needs is to take place'.¹⁰⁸ These narratives by Hughes and Twomey reflected the dominant colonial discourse on modernization as the basis for changing customary land tenure into a modern system of registered land title. They also demonstrate that through a network of association the interest in such discourse could be pursued through the enactment of colonial land law.

The introduction of land adjudication processes through the revised and consolidated land law of 1968 was an attempt to engineer the transformation of subsistence Solomon Islands societies through the modernization of agricultural development. This was happening at a time when Solomon Islands was undergoing the process of decolonisation. Under the 1968 land law reform, formal processes for transforming customary land into statutory perpetual and fixed term estates were provided, with the intention of promoting agricultural development. Solomon Islands was not alone in this approach. Papua New Guinea in the 1960s introduced a number of Acts such as the Land and Titles Commission Act 1962, Lands Registration (Communal Owned Land) Act 1962 and the Land (Tenure Conversion) Act

¹⁰⁶ Hughes, 'Tenure Conversion in the Solomon Islands'. For a biography of Anthony Hughes see Moore, C. (2013). 'Hughes, Anthony V.' *Solomon Islands Historical Encyclopaedia 1893-1978*. Online: <http://www.solomonencyclopaedia.net/biogs/E000223b.htm>.

¹⁰⁷ Hughes, 'Tenure Conversion in the Solomon Islands', 47.

¹⁰⁸ Twomey, 'Land Tenure Systems in the Western Pacific High Commission Territories', 100.

1963 as mechanisms for changing property right regime under the customary land tenure into property right system under registered estates to encourage commercial agriculture.¹⁰⁹

Thus in both Solomon Islands and Papua New Guinea, land law was seen as a tool for creating change, as an instrument for facilitating modernization and economic development.¹¹⁰ This conception of law was part of the law and development discourse¹¹¹ which acknowledged modernization theory as ‘a uniform evolutionary vision of socio-economic and political development along the path of the industrial First World, which is based on capitalism and democracy’.¹¹² The socio-economic and political dimensions of this vision intersected through the government’s attempts to introduce land adjudication and registration as land reform measures for development.

The process of land adjudication introduced through land law reform in the 1960s was aimed at encouraging people to become entrepreneurs and engage in commercial or cash crop farming. It was one approach to ensure that the goal of modernization was achieved through economic development. As a result, the British Solomon Islands government sought to

¹⁰⁹ Bredmeyer, T. (1975). ‘The Registration of Customary Land in Papua New Guinea.’ *Melanesian Law Journal*, 3(2): 267-287; see also Fingleton, J.S. (1980). *Land, Law and Development: A Case Study of Tenure Conversion in Papua New Guinea*. University of the Papua New Guinea, LLM Thesis.

¹¹⁰ Trubek, ‘Toward a Social Theory of Law’, 5.

¹¹¹ For literature on law and development see: Chibundi, M. O. (1997). ‘Law in Development: On Tapping, Gourding, and Serving Palm-Wine.’ *Case Western Reserve Journal of International Law*, 29(2): 167-261; Rose, C.V. (1998). ‘The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study.’ *Law and Society Review*, 32(1): 93-140; Sherman, F.C. (2009). ‘Law and Development Today: The New Developmentalism.’ *German Law Journal*, 10(9): 1257-1273; Tamanaha, B.Z. (2011). ‘The Primacy of Society and the Failures of Law and Development.’ *Cornell International Law Journal*, 44(2): 209-247.

¹¹² Yeh, S.H.K. (1989). *Understanding Development: Modernization and Cultural Values in Asia and the Pacific Region*. United Nations, Educational, Scientific and Cultural Organisation, 3.
<<http://unesdoc.unesco.org/images/0008/000838/083839eo.pdf>> (Accessed 26/02/2017).

introduce communal or collective agriculture development projects. A communal farm development project involves the utilisation and development of either customary land or land alienated by landowner groups ‘according to a predetermined work program involving improved agricultural techniques and materials’.¹¹³ Development on the land could be called a ‘communal farm project’ or ‘a smaller more informal communal development’ depending on certain factors. First, the group must have fifty or more in size, and be formed as a legal entity. Second, the group must have an agricultural development plan. Third, the land area must be 250 acres or more. The success of these communal farm projects depended on group formation and organisation.¹¹⁴ Communal farm projects were aimed at commercial production for export to overseas markets.

I argue that agricultural development as part of land law reform in Solomon Islands was an aspect of the modernization narrative associated with the ‘Green Revolution’ in the 1960s, which promoted the idea that formalised tenure and better farming techniques would increase food productivity. This agricultural modernization narrative was dominant in the 1950s and 1960s, and evident in land reform initiatives in Solomon Islands from 1958 through to the 1960s, as it was in locations as diverse as Papua New Guinea (1950-1960s),¹¹⁵ China (1949-

¹¹³ ‘Communal Farm Development’ in Joan M. Herlihy: Papers relating to Provincial and Local Government in the Solomon Islands 1970s-1980s available at PMB 1190 Reel 13, ‘Papers relating to land in Solomon Islands’,

¹¹⁴ ‘Group Formation’ in Joan M. Herlihy: Papers relating to Provincial and Local Government in the Solomon Islands 1970s-1980s available at PMB 1190 Reel 13.

¹¹⁵ For discussion of laws introduced during this period as part of land reform see for example: Bengo, P.B.B. (1992). ‘The Effect of Changing Land Tenure Policies on Traditional Cultures: A Melanesian Experience.’ In Malcolm Jr, D.G. and Skog, J. (eds), *Land, Culture and Development in the Aquatic Continent*. Kapalua Bay Hotel, Kapalua Pacific Center, 205-208; see also Mugambwa, J. (1987). ‘Land Disputes in PNG: A Colonial Legacy and Post-Independence Solutions.’ *Melanesian Law Journal*, 15: 94-117; Bredmeyer, ‘The Registration of Customary Land in Papua New Guinea’.

1953),¹¹⁶ Korea (1949-1960s),¹¹⁷ and Kenya (1950-1960s).¹¹⁸ Solomon Islands land reform initiatives were not unique; rather they were part of the global flow of ideas transmitted and translated through actor-network associations.

Large numbers of land holding groups and Solomon Islander farmers made requests to the District Commissioner or Department of Lands to survey and register their land.¹¹⁹ However, many of these requests were not from areas where economic development was taking place, but rather from areas where disputes about land use rights had not been satisfactorily settled by the courts. Not all of these requests were accepted by the colonial government for land settlement, which indicated that the government's interest was in land areas that might potentially generate revenue for the state. The criteria for determining land suitable for settlement covered a number of factors: the land must be suitable for cash development; the land area should be five hundred acres or more; and customary land tenure should be broken down gradually, moving to an individualised landholding arrangement.¹²⁰ Evidently, the government was prepared to pursue land settlement only in areas where a boost to economic

¹¹⁶ Ye, J. (2015). 'Land Transfer and the Pursuit of Agricultural Modernization in China.' *Journal of Agrarian Change*, 15(3): 314-337.

¹¹⁷ Jeon, Y., et al. (2000). 'Land Reform, Income Redistribution, and Agricultural Production in Korea.' *Economic Development and Cultural Change*, 48(2): 253-268.

¹¹⁸ The Swynnerton Plan 1954, which aimed to intensify agriculture development through land consolidation and registration was part of the Kenya land reform; Rutten, M. (1997). 'Land Reform in Africa: Lessons from Kenya.' In Van Naerssen, T., Rutten, M. and Zoomers, A. (eds), *The Diversity of Development: Essays in Honour of Jan Kleinpenning*. Assen, Van Gorcum: 71-83; see also Kariuki, S. (2004). 'Can Negotiated Land Reforms Deliver? The case of Kenya, South Africa and Zimbabwe.' *South African Journal of International Affairs*, 11(2): 117-128; Cousins and Scoones, 'Contested Paradigms of 'Viability' in Redistributive Land Reform: Perspectives from Southern Africa.'

¹¹⁹ Joan M. Herlihy: Papers relating to Provincial and Local Government in the Solomon Islands 1970s-1980s, PMB 1190, 'Papers relating to land in Solomon Islands', Reel 13.

¹²⁰ For a discussion of these criteria see Larmour, 'Solomon Islands', 74.

development was feasible. These criteria also demonstrate that the idea of tenure conversion was associated with the colonial perception of the evolution of customary tenure from communal to individual ownership, an important component of the modernization narrative. Such narratives had been evident in the findings of East Africa Royal Commission on Land and Population, and were also adopted in the Allan Commission Report (Chapter 5).

The land legislation also provided for a variety of land administration officers¹²¹ who were tasked with carrying out land settlement and registration. These officers proceeded with land settlement schemes in various parts of the Solomon Islands, with the idea of promoting communal farm development projects. The first two test cases of land settlement were Mbuni in 1964 and West Mbuni in 1965, both in the New Georgia Group, Western Solomon Islands. A number of researchers have examined these two schemes along with others in Malaita,¹²² Western Solomons,¹²³ Guadalcanal¹²⁴ and Makira¹²⁵. Their research findings were assembled in a collection edited by Ian Heath, himself an actor in Solomon Islands land reform.¹²⁶ The collection highlighted that, in practice there was not much development on registered land

¹²¹ These land administration officers played various roles such as settlement officer, recording officer, demarcation officer and surveying.

¹²² Example of schemes on Malaita: Fiu-Kelakwai on Malaita in 1966, Fa'asitoro in 1969 and Matakwalao in late 1974: see Heath, I. (ed). (1979). *Land Research in Solomon Islands*. Solomon Islands, Lands Division Ministry of Agriculture and Lands.

¹²³ Example of schemes in the Western Solomons: Vona vona in 1969. This area comprised of thirty-nine islands but twenty-four of these were considered as suitable for land tenure conversion in 1969. Only two islands were recorded and registered in 2 parcels: Heath, *Land Research in Solomon Islands*.

¹²⁴ Example of schemes on Guadalcanal: Ndoma in 1970, Komuvadha in 1973, Chuva in 1974: Heath, *Land Research in Solomon Islands*.

¹²⁵ Example of scheme on Makira: Kaonasugu in 1978: Heath, *Land Research in Solomon Islands*.

¹²⁶ Heath, *Land Research in Solomon Islands*.

and that registration did not end land disputes. Other scholars who have written on the land settlement schemes, such as Peter Larmour, have pointed out that the ‘whole program produced roughly as many individual as it did collective titles’.¹²⁷ According to Larmour, individual registered land titles numbered 290 or 50%, while plots under ownership in common numbered 100 or 17%. The remainder were registered land titles under joint ownership which accounted for 186 or 32%.¹²⁸ The total number of schemes between 1965 and 1983 was thirteen, which covered a ‘total land area of 6,990 ha, or 0.25% of the total land area of Solomon Islands’.¹²⁹ These statistics indicate that the fundamental goal of land law reform initiatives in Solomon Islands in the 1960s had fallen short of the aim of encouraging more landowners to register their land to provide tenure security, access to credit and elimination of land disputes.¹³⁰

Archdeacon P.K. Thompson (Legislative Council member for North Central Malaita) moved a motion in the Council in December 1969 for the establishment of a committee to look into alternative methods of registering customary land, because the land adjudication procedures under the existing land law were ‘unlikely to provide a speedy solution to the need of Melanesians for registered ownership’.¹³¹ What Thompson envisaged as registered ownership was a formal titling of land to facilitate economic development. Such an idea was

¹²⁷ Larmour, ‘Solomon Islands’, 74.

¹²⁸ Larmour, ‘Solomon Islands’, 74.

¹²⁹ Larmour, ‘Solomon Islands’, 68 and 72.

¹³⁰ Fanegar, S. (1979) ‘Matakwalao, Malaita’. In Heath, I. (ed), *Land Research in Solomon Islands*, 7-29, 7.

¹³¹ Motion by Archdeacon P.K. Thomson (North Central Malaita, Friday 5 December 1969: British Solomon Islands Protectorate Legislative Council Meeting, December 1969.

not unique; it was in line with thinking at the time on the formalisation of tenure, as a process that would increase productivity and promote a positive investment in land.¹³² Twomey, the Commissioner of Lands, agreed with Thompson's motion and stressed that the 'further customary tenure [could] go itself along the road to modernization, the more people [could] bring about acceptance of new economic and social needs'.¹³³

Following the Thompson motion, the High Commissioner set up a Committee on Registration of Customary Land on 1 April 1970. Its terms of reference were to examine issues of customary land registration, and the costs and benefits of alternative methods.¹³⁴ The Committee consisted of eleven members, including Gerald Paul Nazareth as the Chairperson. Nazareth was a lawyer from Kenya who had joined the public service in his own country in 1954 as a Prosecutor, being promoted later to Senior Crown's Counsel and Deputy Legal Draftsman. Nazareth moved to Solomon Islands in 1963 to take up the position of Assistant Attorney General, and was subsequently appointed Solicitor General and Attorney General to the Western Pacific High Commission. He was also a member of the Solomon Islands Legislative and Executive Councils and for a time Deputy Governor. The Committee, also known as the Nazareth Committee, carried out a full program of consultation during 1970,

¹³² Bromley, D.W. (2009). 'Formalising Property Relations in the Developing World: The Wrong Prescription for the Wrong Malady.' *Land Use Policy*, 26(1): 20-27; see also Sjaastad, E. and Cousins, B. (2009). 'Formalisation of Land Rights in the South: An Overview.' *Land Use Policy*, 26(1): 1-9; Jacoby, H.G. and Minten, B. (2007). 'Is Land Titling in Sub-Saharan Africa Cost-Effective? Evidence from Madagascar.' *The World Bank Economic Review*, 21(3): 461-485; and Meinzen-Dick, R. and Mwangi, E. (2009). 'Cutting the Web of Interests: Pitfalls of Formalizing Property Rights.' *Land Use Policy*, 26(1): 36-43.

¹³³ Mr. J.B. Twomey (Commissioner of Lands and Surveys), Friday 5 December 1969: British Solomon Islands Protectorate Legislative Council Meeting, December 1969,

¹³⁴ British Solomon Islands. (1971). *Report for the Years 1971*. Honiara, BSIP, 24.

meeting with government land administration officers and a total of 553 people from various provinces.

The Committee also sought expert advice on technical aspects of land registration from two individuals. One was Jeremy Lawrence, who replaced Simpson as Land Tenure Adviser in the Ministry of Overseas Development Colonial Office in London in the 1970s. Lawrence had worked in Uganda in the 1950s, and by the 1960s he was an expert legal consultant with the United National Food Agriculture Agency. The other expert was Simpson who, following his retirement, was engaged in 1969 to review the land adjudication and conversion procedures in Papua New Guinea. Simpson wrote a report that recommended that the PNG government enact a new registered land legislation along the lines of the Kenya Registered Land Act, which was considered better than the Torrens system. This, he argued, was because the Kenya Registered Land Act provided for the registration of interest in both Crown land and customary land, whereas the Torrens system registered only Crown grants and was ‘not suited to the ‘recognition’ of an existing interest’ derived from customary land.¹³⁵

Simpson’s report was accepted by the government and debated in the PNG House of Assembly. Following this, a draft Bill was prepared by Jim Fleming, a Kenyan official who had worked with Simpson in Kenya and then in the British Colonial Office.¹³⁶ The draft Bill was presented in the House of Assembly in June 1971 but it was withdrawn due to strong opposition from politicians who claimed that it was drafted without any consultation. Others,

¹³⁵ Simpson, ‘Land Problems in Papua New Guinea’, 14; for discussion on Simpson’s report see Bredmeyer, ‘The Registration of Customary Land in Papua New Guinea’.

¹³⁶ Curtin, T., et al. (2003). ‘Land Registration in Papua New Guinea: Competing Perspectives.’ *State Society and Governance in Melanesia*, Discussion Paper 2003/1. Canberra, ANU.

such as Alan Ward, a New Zealand historian who was teaching at the University of the Papua New Guinea and in the PNG legal profession, strongly criticised the Bill.¹³⁷ These different actors played a role in influencing the withdrawal of the Bill. Although Simpson and Fleming had been able to work through their actor-network to create an association with PNG officials and exert influence over drafting of the land law, they were unable to maintain the interest and support of these actors to ensure they would enact the draft legislation.

Nazareth, with his extensive legal experience from Kenya, played a central role in drafting his Committee's Report, in which three broad issues were highlighted. First, there was widespread misunderstanding and suspicion of land settlement and registration. Second, customary rights to land were highly valued and resilient despite instances of individual ownership and sale of customary land. Third, there was no evidence to prove that registration was necessary for development, or constituted development, or that it prevented land disputes.¹³⁸ However, the Committee noted that people were interested to have their land rights secured and boundaries demarcated. Two alternative recommendations were proposed to meet this demand without putting too great a financial burden on the protectorate government.¹³⁹ First, sporadic registration should be introduced to cater for individual entrepreneurs who were prepared to meet the costs. In other words, 'the market, rather than

¹³⁷ Bredmeyer, 'The Registration of Customary Land in Papua New Guinea', 283.

¹³⁸ BSIP. (1971). Report of the Committee on Registration of Customary Land (mimeo) Chairman: G.P Nazareth. Honiara, Western Pacific High Commission; for detailed discussion of the report see also Larmour, 'Solomon Islands', 76.

¹³⁹ Heath, *Land Policy in Solomon Islands*, 402.

administrative process, should determine when and where adjudication should be applied'.¹⁴⁰ Second, there should be provision for customary land registration that focused on recording the rights of groups to ownership of customary land. This should be aimed at preserving rather than transforming the rights of the group. Part of this process should include the demarcation and recording of the land boundaries. Only then should there be leasing of the land to members of the group or any other person.¹⁴¹

Associated with the idea of customary land registration was the setting up of new courts vested with the power to carry out demarcation, registration and control of leasing of customary land.¹⁴² These recommendations reflected ideas similar to those that Kenya considered in its land law reform initiatives in the 1950s and 1960s. Given his legal experience of working in Kenya, Nazareth was familiar with these ideas, which influenced his framing of the Committee's recommendations (although the recommendation on sporadic adjudication was contrary to the systematic land settlement concept transmitted from Kenya to Solomon Islands).¹⁴³ This demonstrates how differences in personality and opinion influence the kinds of legal concepts that are transmitted to developing countries like Solomon Islands.

¹⁴⁰ Larmour, P. (1987). *Land Policy and Decolonisation in Melanesia: A Comparative Study of Land Policymaking and Implementation before and after Independence in Papua New Guinea, Solomon Islands and Vanuatu*. Macquarie University, PhD Thesis, Chapter 8, 23.

¹⁴¹ BSIP, Report of the Committee on Registration of Customary Land (mimeo) Chairman: G.P Nazareth, 5 and 22.

¹⁴² 'Committee of the Governing Council (1973). 'Discussion Paper for the Local Government Committee of the Governing Council' in Joan M. Herlihy: *Papers relating to Provincial and Local Government in the Solomon Islands 1970s-1980s*, available at PMB 1190 Reel 13, *Papers Relating to Land in Solomon Islands*.

¹⁴³ Heath, 'Solomon Islands', 403.

Lawrence, the Land Tenure Adviser in the British's Ministry of Overseas Development Colonial Office in London, visited Solomon Islands in January 1972,¹⁴⁴ and produced a report that focused on land registration and settlement.¹⁴⁵ Lawrence advised against sporadic land registration because of cost implications and recommended that the existing system for land adjudication should be retained. According to Carol Dickerman and others, Lawrence had a 'deeper and wider experience of land registration' than his peers, and had 'written extensively about [registration] programs all over the world'.¹⁴⁶ He was an enthusiastic advocate for land registration, but was of the view that it should be carried out systematically based on certain conditions. These conditions included determining whether agricultural production would increase due to land registration, evidence of genuine demand for registration, and whether greater tenure security would arise due to land registration.¹⁴⁷ Drawing on his extensive global knowledge, Lawrence was able to persuade the Governing Council of the merits of his views on land registration. As a result, the Governing Council rejected the Committee's recommendation for sporadic registration and retained systematic land registration under the existing land law. It also recommended the establishment of customary land appeal courts to deal with appeal matters.¹⁴⁸ The Governing Council appears to have favoured creating a formal forum for dealing with disputes. It was not prepared to accept the Committee's

¹⁴⁴ Larmour, 'Policy Transfer and Reversal', 155; see also Curtin, 'Land Registration in Papua New Guinea'.

¹⁴⁵ Lawrence, J.C.D. (1972). 'Report of Visit to Solomon Islands, 15-20 February 1972'. Personal Copy.

¹⁴⁶ Dickerman, C.W., et al. (1989). 'Security of Tenure and Land Registration in Africa: Literature Review and Synthesis'. LTC Paper 137. Madison, Land Tenure Centre, University of Wisconsin-Madison, xxvi.

¹⁴⁷ Dickerman, 'Security of Tenure and Land Registration in Africa', xxvii.

¹⁴⁸ For establishment of customary land appeal courts see Land and Titles (Amendment) Ordinance 1972; and for detailed discussion on courts see Corrin, J. (2011). 'Customary Land in Solomon Islands: A Victim of Legal Pluralism.' *Revue Juridique Polynésienne*, 12(Special Issue): 277-305.

recommendation to create an alternative legal mechanism for determining the rights of customary land owners.

That Lawrence's approach to land adjudication matched the proposals put forward by Simpson and Fleming for PNG is unsurprising because all three had worked as land advisers in the British Colonial Office; they belonged to the same actor-network association. First, their careers intersected in Kenya. Simpson, the Colonial Office Land Tenure Adviser, was a member of the Kenya Working Party Report on African Land Tenure 1957-1958, which sought to 'examine and make recommendations as to the measures necessary to introduce a system of land tenure capable of application to all areas of the Native Land'.¹⁴⁹ Lawrence was the chair of a Commission that was established in 1965-1966 to examine the consolidation and registration of Land in Kenya.¹⁵⁰ Second, the experiences of these actors on land legislation were translated by Simpson into a book published in 1976 titled *Land Law and Registration*.¹⁵¹ The convergence of these different actor experiences in the transmission of ideas about land adjudication and registration across colonial borders demonstrates that although land reform is a technical process, actor-network associations play a pivotal role.

The colonial government's continued promotion of the modernization of agriculture was strongly associated with land adjudication, and the prominence of modernization theory was

¹⁴⁹ Report of Working Party on African Land Tenure in Kenya. (1959). *Journal of African Law*, 3 (1):2-6, 2.

¹⁵⁰ Republic of Kenya, Report of the Mission on Land Consolidation and Registration in Kenya 1965-1966.

¹⁵¹ Larmour, 'Policy Transfer and Reversal', 155.

evident in the Solomon Islands Sixth Development Plan 1971-1973. The Development Plan listed the following policy objectives for this period:¹⁵²

- (a) rehabilitate smallholder coconut planting done in the 1960s and plan coconut rehabilitation;
- (b) develop oil palm to become second main crop by 1980;
- (c) build up meat production supply;
- (d) achieve self-sufficiency in rice production by 1974-1975 and thereafter;
- (e) increase productivity in subsistence crop production;
- (f) develop cocoa, spices and other cash crops on an economic basis;
- (g) build infrastructure for agriculture (marketing, research, availability of supplies, mechanisation, transport etc.) and a training and localisation program as prerequisites to development; and
- (h) educate and encourage the community towards a modern concept of agriculture (intermediate technology, commercial farming, zoning and specialisation, increased labour productivity, improved genetic material, etc.) leading to more productive allocation of resources in future.

The language and objectives used in this document were clearly reflective of modernization theory. For instance, the use of modern farming techniques to increase productivity as one of the policy objectives was a key aspect of the modernization narrative.

One important factor that required consideration in order to facilitate the implementation of the policy objectives was access to land. The government's immediate approach was acquiring land by following the acquisition process outlined under the land legislation of 1968.¹⁵³ First, the government negotiated with customary landowners, and then purchased or leased their land for development. For example, the government negotiated with landowners to acquire timber cutting rights over customary land in Western Province and on Isabel. The government thereby became not only a developer but also a lessee with an interest in promoting economic development. Second, the government compulsorily acquired land, as

¹⁵² British Solomon Islands. (1973). *Report for the Year 1972*. Honiara, BSIP.

¹⁵³ Land and Titles Ordinance 1968.

prescribed under Part V Division 2 of the Ordinance, for a public purpose with provision for compensating landowners. The government's decision to compulsorily acquire land was justified as an administrative expedient for development. The process was considered quite quick, and all customary land rights would be automatically extinguished upon the declaration of the High Commissioner. As Peter Larmour has pointed out, the process 'was essentially an abbreviated form of land settlement or registration after systematic adjudication'.¹⁵⁴

Put simply, compulsory land acquisition took less time to complete than a formal land settlement process. For example, in 1971 the government compulsorily acquired 1,478 hectares of the Guadalcanal Plains with the permission of the customary landowners. The land was then returned to landowner claimants in exchange for long-term leases over parts of the land earmarked for oil palm and rice development.¹⁵⁵ This was a joint venture arrangement between the Commonwealth Development Corporation, the government and landowners.¹⁵⁶ Another example was the compulsory acquisition of 24,000 hectares of customary land on Rennell Island in 1971 for bauxite mining.¹⁵⁷ But compulsory acquisition of customary land became more difficult following the enactment of the Solomon Islands Independent Constitution 1978, which required under section 112 (a) and (b) 'prior

¹⁵⁴ Larmour, *Land Policy and Decolonisation in Melanesia*, Chapter 7, 7.

¹⁵⁵ For a detailed discussion on this see Heath, *Land Policy in Solomon Islands*; see also Larmour, *Land Policy and Decolonisation in Melanesia*, Chapter 7.

¹⁵⁶ Lasaqa, I.Q. (1968). *Melanesians Choice: A Geographical Study of Tasimboko Participation in the Cash Economy, Guadalcanal, British Solomon Islands*. Australian National University, PhD Thesis.

¹⁵⁷ Larmour, P. (1981). 'Solomon Islands: Compulsory Acquisition.' In Larmour, P., Crocombe, R. and Taungenga, A. (eds), *Land, People and Government*. Suva, USP, 31-34.

negotiation with customary landowners who should have access to independent legal advice'.¹⁵⁸

Apart from acquiring land for development, the government proceeded with land redistribution from European plantation owners to Solomon Islanders who had been plantation labourers during the early colonial period. The government's decision to redistribute plantation land from Europeans to Solomon Islanders was based on socio-political logic rather than economic factors. It was a response to emerging contestations over the historical processes of land alienation and utilisation in Solomon Islands. Land redistribution followed two processes: the return of uncommitted government land, which was subdivided and then granted as registered land titles to claimants who were squatters, small farmers and descendants of original customary land owners. These various claimants usually had competing or overlapping interests, which sometimes caused land contestations.¹⁵⁹ Second, the purchase of plantations owned by foreigners, which were returned to landowners under a plantation purchase program described as 'communal farming' and 'block development'. This program was run by the Land Use Division which later became the Ministry of Agriculture and Lands.¹⁶⁰

As part of the plantation purchase program, the government helped landowners to organise themselves into co-operatives and purchase back plantations with 'arranged loan finance

¹⁵⁸ Larmour, Land Policy and Decolonisation in Melanesia.

¹⁵⁹ Scheffler, H.W. and Larmour, P. (1987). 'Solomon Islands: Evolving a New Custom.' In Crocombe, R. (ed), *Land Tenure in the Pacific*. Suva, USP, 314-315, 314.

¹⁶⁰ Larmour, P. (1988). 'Land Policy and Decolonisation in Melanesia.' In Ghai, Y. (ed), *Law, Government and Politics in the Pacific Island States*. Suva, Institute of Pacific Studies, USP, 174-201, 190.

through Agricultural and Industrial Loans Boards', later known as the Development Bank.¹⁶¹ This financial institution was established by the government for landowners to access credit if they had registered plantation estates. Landowners could also access credit for development if they registered their customary land as property estates with a documented title. This reinforced the dominant thinking among colonial administrators that customary landowners could only benefit from their land if it was registered. The Development Bank, as Peter Larmour points out, provided capital grants for equipment to rehabilitate rundown plantations. The landowning groups were to repay the loan from the production of their plantations. However, the Development Bank soon experienced financial difficulties due to defaults on loan repayments: 50% of the Development Bank's loan portfolio was in arrears by 1981, and by the 1990s it had a loss of US\$825,000, which was written off. The Development Bank stopped lending before 2000 and by end of 2004 it had incurred an accumulated debt of approximately US\$5.25 million, resulting in its closure.¹⁶² The demise of the Development Bank meant that landowners would have to access credit from commercial banks.

A total number of twelve groups were involved in the plantation repurchase scheme, including Baunani, one of my case study field sites. In the 1960s the government bought approximately a third of the alienated area, 'planning to subdivide and grant some of it to squatters already on the land, and allocate the rest to land-short Melanesians from

¹⁶¹ Bramham, K. (1979). 'Guguha Land Purchase Cooperative.' In Larmour, P. (ed), *Land in Solomon Islands*. Fiji, Institute of Pacific Studies, USP and Ministry of Agriculture Lands, 53-57, 54.

¹⁶² McCaffrey, M. (2010). *In Search of Sustainability: The Provision of Rural Financial Services in Solomon Islands*. Suva, Fiji, Pacific Financial Inclusion Program, UNDP, 10.

elsewhere'.¹⁶³ Although the land was subdivided, the government was unable to proceed with resettlement of outsiders due to hostility from the customary landowners. Landowners who received blocks of land through the plantation purchase program in the 1970s at first were able to work together under a co-operative scheme, but due to the lack of technical and financial support many of these co-operative schemes did not last long. Further, many people squatting on various parts of the Baunani land did not have a secure legal title, but they continued to use customary landowner narratives to this present day as the basis for asserting their land rights, without realising that the Baunani land was converted into a registered estate subject to the rules set out under the Land and Titles Legislation.

Peter Larmour explains that the plantation purchase program was framed 'in developmental rather than political terms'¹⁶⁴ in order to attract British government funding for technical and equipment support.¹⁶⁵ The concept of development, according to scholars like Arturo Escobar, included social development, which in its shorthand would encompass improvement in 'education, health care, income distribution, socio-economic and gender equality and rural welfare'.¹⁶⁶ In its wider sense, social development would involve 'nationalisation of major assets and the redistribution of wealth (as in land reform)'.¹⁶⁷ Such a conception of development as part of the modernization narrative was evident in the World

¹⁶³ Larmour, *Land Policy and Decolonisation in Melanesia*, Chapter 5, 13.

¹⁶⁴ Larmour, P. (1984). 'Alienated Land and Independence in Melanesia.' *Pacific Studies*, 8(1): 1-47, 15; see also Larmour, 'Land Policy and Decolonisation in Melanesia', 190.

¹⁶⁵ Scheffler and Larmour, 'Solomon Islands', 314-315.

¹⁶⁶ Escobar, *Encountering Development*, 41.

¹⁶⁷ Escobar, *Encountering Development*, 41.

Bank's Land Reform: Sector Policy Paper 1975. The Bank in this policy document noted that 'skewed land ownership and unregulated tenancy' have a negative effect on 'agriculture productivity, employment, and equity'.¹⁶⁸ As a result, the World Bank recommended land registration as an important precondition for modern agricultural development; an abandonment of customary land tenure 'in favour of freehold title; promotion of land markets for more efficient land transfers; [and] support for land redistribution on the grounds of efficiency and equity'.¹⁶⁹ These recommendations indicate that aspects of modernization theory continued to influence development thinking in the 1970s. They also demonstrate the dominant view among proponents of land reform such as the World Bank that 'customary tenure systems were unable to provide effective and transparent land markets';¹⁷⁰ hence, the argument for land reform that it promoted a 'modern statutory system of registered title'.¹⁷¹ Ivak Alvik has suggested that the World Bank deliberately propagates the conception of customary land as backward and inefficient for economic growth.¹⁷² It was on this basis that land reform was included as part of the policy package promoted to those developing countries that were gaining Independence during the 1970s and 1980s.

¹⁶⁸ Eckholm, E. (1979). *The Dispossessed of the Earth: Land Reform and Sustainable Development*. Washington, Worldwatch Institute, 37.

¹⁶⁹ Borras, S.M., et al. (2009). 'Anti-Land Reform Land Policy? The World Bank's Development Assistance to Agrarian Reform in the Philippines.' *Overseas Aid and Agrarian Reform Working Paper Series*, 11(11), 3.

¹⁷⁰ Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis, 6.

¹⁷¹ Banda, J.L. (2011). 'Romancing Customary Tenure: Challenges and Prospects for the Neo-Liberal Suitor.' In Fenrich, J., Galizzi, P. and Higgin, T.E. (eds), *The Future of African Customary Law*. Cambridge, Cambridge University Press, 312-335, 324.

¹⁷² Alvik, I. (2010). 'The Hybrid Nature of Investment Treaty Arbitration - Straddling the National/International Divide.' In Eriksen, C.C. and Emberland, M. (eds), *The New International Law: An Anthology*. Boston, Martinus Nijhoff Publishers, 89-98.

6.6 The Post-Independence Period

Customary land and agricultural development were central topics for meetings of the Legislative Assembly since its establishment following the promulgation of the Solomon Islands Order 1974, as part of the decolonization process. The Legislative Assembly replaced the Governing Council, which was a single body with committees, based on the Westminster model of ministerial government.¹⁷³ ‘All the members of the Governing Council automatically became members of the Legislative Assembly’,¹⁷⁴ and they were authorised to appoint the Chief Minister. Nine other members were appointed as Ministers by the Governor on the advice of the Chief Minister to form the Council of Ministers.¹⁷⁵ With this new governance arrangement the ‘traditional shyness and unwillingness to criticize others openly was being replaced by frank and genuine expression of one’s views and criticisms in the Assembly’.¹⁷⁶

On 9 December 1976, Kukuti, a member of the Legislative Assembly, moved a private member’s Bill for the review of agricultural policy, which was unanimously agreed on by members and accepted by government, although the reasons for accepting it varied. Kukuti was in favour of ‘small scale projects and direct assistance to rural people instead of large scale or long term schemes’.¹⁷⁷ Two other members who contributed to this Bill were Aqorau

¹⁷³ Kabutaulaka, ‘Westminster meets Solomons in the Honiara riots’, 100.

¹⁷⁴ Saemala, F. (1982). ‘Solomon Islands: Uniting the Diversity.’ In Crocombe, R. and Ali, A. (eds), *Politics in Melanesia*. Suva, Institute of Pacific Studies, USP, 70.

¹⁷⁵ Saemala, ‘Solomon Islands.’

¹⁷⁶ Saemala, ‘Solomon Islands’, 71.

¹⁷⁷ Solomon Islands Budget Meeting, 9 December 1976, 5: PMB 1189/271 Reel 8.

and Ulufa'alu. Aqorau stressed that the main purpose of the Bill 'should be to give something to the people, not just to think of consequential economic growth of revenue to Government [sic]'.¹⁷⁸ Ulufa'alu contributed to the debate by stating that '[s]ince the economy of the country was agricultural, it was necessary first to look at the land law and go for land reform'.¹⁷⁹ This was the first time the term 'land reform' was referred to explicitly by a Solomon Islander at the national level. What was evident from the statements of these Legislative Assembly members was the idea of change associated with social development. Ulufa'alu's statement resonates with the dominant thinking of modernising agriculture through land law reform. It is likely that he had been exposed to land reform ideas during his period as an economics student at the University of Papua New Guinea, from which he graduated in 1974.

In addition to the debates on customary land and development, a Special Select Committee on Lands and Mining that was established in 1974 produced a report in 1976 on land issues.¹⁸⁰ The Committee was modelled partly on PNG's Commission of Enquiry into Land Matters, though 'with less outside advice, and more reliant on popular opinion'.¹⁸¹ The Committee's findings canvassed 'what the people said', which was a collated summary based on reports of the sub-committee that toured the country. Harold Scheffler and Peter Larmour have described its approach as 'historical and fundamentalist: it was unimpressed with statistics,

¹⁷⁸ Solomon Islands Budget Meeting, 9 December 1976, 5.

¹⁷⁹ Solomon Islands Budget Meeting, 9 December 1976, 6.

¹⁸⁰ For detailed outline of membership of the Committee see Solomon Islands, Report Special Select Committee on Lands and Mining. (May 1976). Honiara, Ministry of Agriculture and Lands.

¹⁸¹ Larmour, 'Land Policy and Decolonisation in Melanesia', 183.

official advice, and arguments about the future'.¹⁸² The Special Select Committee made numerous suggestions including the return of developed land as block development schemes, the return of underdeveloped alienated land to trustees or organised groups, Land Boards to be set up by Area Committees for settling disputes, and a balance be maintained between commercial farming and subsistence activities.¹⁸³ These recommendations revealed clearly, for the first time at the national level, Solomon Islander attitudes towards how land had been alienated in the past by government and Europeans and their desire for it to be returned to the original landowners.

The Special Select Committee was also critical about registration associated with land settlement, stressing that such a system was not appropriate for Solomon Islands. It found that the strongest objection by Solomon Islanders 'was not to registration, but to registration of individuals as owners of land'.¹⁸⁴ As a result, it recommended that government Area Committees should be authorised to record customary land rights and boundaries. This should begin with recording 'the outside boundaries of the group's land' and then recording 'the rights of members of the group to use different parts of the land'.¹⁸⁵ These recorded customary land rights should be recognised by the Banks and Loans Board as security for loans. The Committee envisaged that this recommended new system of recording and demarcating customary land should run parallel with the land settlements, 'if and when

¹⁸² Scheffler, and Larmour, 'Solomon Islands', 316.

¹⁸³ Solomon Islands, Report of the Special Select Committee on Lands and Mining.

¹⁸⁴ Solomon Islands, Report of the Special Select Committee on Lands and Mining, 17.

¹⁸⁵ Solomon Islands, Report of the Special Select Committee on Lands and Mining, 18-19.

people want it, in towns and rural areas where there is a lot of development'.¹⁸⁶ The Committee's recommendation to record customary land was similar to that proposed by the Nazareth Committee. All these recommendations demonstrated the thinking of Solomon Islanders around issues of land disputes, resolution, and processes of land adjudication and registration. Such thinking shaped the narrative on land reform as Solomon Islands was moving towards Independence.

The Special Select Committee's report was introduced by the Mamaloni government in the Legislative Assembly in April 1976, two months before the general elections, where it was debated as a 'take note' motion. A new government led by Peter Kenilorea was formed after the election in June, and decided on a course of action to deal with the Special Select Committee's report. The proposal was for a working party of officials and representatives of interest groups to examine the report and decide on the parts that could be implemented,¹⁸⁷ but the proposal was defeated during the Legislative Assembly's meeting in September 1976. Following this, the government submitted a White Paper¹⁸⁸ based on discussions of the Special Select Committee's report among members of the Legislative Assembly. The White Paper outlined how the government proposed:

(a) To deal with the effects of grants of 'wasteland' and sales of freehold, and reform the law on compulsory acquisition in a way that fits with our plans for economic development and national independence; (b) to work with local

¹⁸⁶ Solomon Islands, Report of the Special Select Committee on Lands and Mining, 18.

¹⁸⁷ Larmour, 'Alienated Land and Independence in Melanesia', 23.

¹⁸⁸ Solomon Islands Government. (1977). *White Paper: New Land Policy*. Honiara, Solomon Islands Government.

councils and their Area Committees to establish a practical system of recording ownership and settling disputes in a way that fits traditional principles of land tenure to rural development.

What the White Paper proposed was essentially a translation of the findings and recommendations contained in the Special Select Committee's report. However, the White Paper was also voted down in the Legislative Assembly due to political differences between the Council of Ministers as the executive and members of the Assembly as the legislature.¹⁸⁹ The government's two counter proposals to the Special Select Committee report failed because the 'main dispute between the government and the Assembly, which also involved independence negotiations with Britain, was about alienated and government land'.¹⁹⁰ Due to the debate on land issues and the feeling of nationalism as Solomon Islands was moving towards Independence, the colonial government decided to introduce new laws to protect the interests of Solomon Islander landowners.

First, the government introduced the Land and Titles (Amendment) Ordinance 1977. This legislation put an end to foreign ownership of perpetual estate titles. It provided for the conversion of foreign-owned perpetual estates and freehold into fixed term estates under lease of 75 years from the government. The person involved in advising the government on drafting the 1977 legislation was Jim Fingleton from Australia. He was a 'public solicitor's lawyer advising Papua New Guineans on land claims' and later 'became the research officer for the Commission of Enquiry into Land Matters in PNG', and adviser to the 'Vanuatu

¹⁸⁹ Saemala, 'Solomon Islands.'

¹⁹⁰ Larmour, 'Solomon Islands', 78.

government on its 1980 Land Reform Act and subsequent implementation'.¹⁹¹ Fingleton was part of a new network of actors moving from one country to another within the Melanesian region during the immediate pre- and post-independence periods. As with other actors, Fingleton's conceptual frame on customary land in Solomon Islands and Vanuatu was shaped by his prior experience in PNG. Second, the government introduced, as part of the Constitution of Solomon Islands, a provision that allowed only Solomon Islanders or a limited class of people to acquire and hold land permanently as a registered perpetual title owner.¹⁹²

Apart from the legislative changes, a Land Research Project was designed to examine key land issues such as land settlement, land disputes and land use agreements which were amenable to land reform approaches. This project was funded by the United Nation Development Program (UNDP) under their United Nation Development Advisory Team. Peter Larmour started as a junior officer in the Ministry of Lands in the mid-1970s. He 'was the Secretary to Solomon Island's Parliamentary Committee on Land and Mining Policy, the counterpart to PNG's Commission of Enquiry into Land Matters',¹⁹³ and sponsored by the Solomon Islands government to visit Papua New Guinea 'to report on the policy changes there'.¹⁹⁴ He was also influenced by the work of Ron Crocombe on land in the Pacific.¹⁹⁵

¹⁹¹ Larmour, *Foreign Flowers*, 60.

¹⁹² Section 110, Constitution of Solomon Islands. For the class of person(s) who may permanently own land as perpetual estates see section 112(4), Land and Titles Act (Cap 133).

¹⁹³ Larmour, *Foreign Flowers*, 60.

¹⁹⁴ Larmour, *Foreign Flowers*.

¹⁹⁵ Larmour, 'Policy Transfer and Reversal', 156.

Larmour's proposal for a Land Research Project showed the influence of this network and of his experience.

Larmour was also instrumental in obtaining funding for the Project from UNDP, and was able to recruit Ian Heath as land consultant under the project. Heath was a PhD student from La Trobe University, doing research on Solomon Islands land policy. Heath's supervisor was Alan Ward, an actor who was central in shaping narratives around land reform in Papua New Guinea during the 1970s. Heath did archival research in Honiara in 1976 and worked closely with officers of the Lands Division, Ministry of Lands and Agriculture. This association with the Lands Division provided Heath with the opportunity to return in 1978 and 1979 as a consultant under the Project.

The Project proposed an alternative to the typical consultant and committee models used by colonial administrations and governments in the past to drive their land reform attempts. The need for an alternative model arose because a series of 'parliament committees had investigated' key land issues 'and made recommendations to parliament, but many of the results relating to customary land were not acted upon at a political level'.¹⁹⁶ As a result, the best course of action was the establishment of a Land Research Project to provide information that would assist the Lands Division to undertake its own internal review of the range of land policies and alternatives currently proposed by the various parliament committees. The Land Research Project had three phases: conference, fieldwork and conference. The first phase was funded by UNDP. It involved a conference that was held in September 1978, which had as its theme the 'Future of Customary Land Registration in Melanesia'. This conference

¹⁹⁶ Heath, *Land Research in Solomon Islands*, 1.

brought together delegates from provincial governments and neighbouring countries to compare existing and proposed policies on land registration and recording as well as issues in Melanesia. It was envisaged the conference would also assist in the further definition of the Research Project.¹⁹⁷ The network created here was not only national but also regional and provided the basis for a regional exchange of experiences and lessons on land issues.

The second phase was funded by the government, and consisted of the actual fieldwork research on issues identified from 'material presented in the Report of the Select Committee and the discussions at the Regional Conference'.¹⁹⁸ The general themes that emerged from the Select Committee report highlighted issues with the existing registration system, land dispute process and land use agreements. These themes were investigated by eighteen Solomon Islander researchers recruited from the University of the South Pacific and University of Papua New Guinea. These Solomon Islanders were undergraduate students who lacked basic knowledge or experience of field research, analysis of data and report presentation. To assist them to build their research capacity, some supervision was provided in the field and a series of workshops was also organised during the research period. A final workshop was organised after the fieldwork to help the researchers analyse and write up their data to have it ready for publication.¹⁹⁹

In the third phase, another conference was held in June 1979 which discussed the research findings and made recommendations for government policy formulation. The

¹⁹⁷ Heath, *Land Research in Solomon Islands*, 2.

¹⁹⁸ Heath, *Land Research in Solomon Islands*, 2.

¹⁹⁹ Heath, *Land Research in Solomon Islands*.

recommendations of the Research Project, as discussed by Larmour, were that ‘clan boundaries, genealogies and traditions should be recorded; Area Committees should assist in demarcation, and keep the records; the lands division’s role should be to provide technical assistance and meet part of the costs; and national legislation should make the records legally binding’.²⁰⁰ Larmour highlighted that the recommendations were widely circulated and endorsed by government officials. There was also plenty of good will regarding these recommendations, and the training of a cadre of Solomon Islander researchers involved in the project was considered a real benefit. The Lands Division was no longer interested in pursuing land settlement and there was official support for developing an alternative system.

However, there was very little progress until 1982 because there was limited support from national politicians.²⁰¹ Peter Kenilorea’s government was in a minority in the Legislative Assembly (Parliament from 1980) from 1976-1980, and relied on the support of an Independent group to get its legislation passed. Following the first general elections in 1980, Peter Kenilorea was elected again as Prime Minister under a coalition government, but he was later forced to resign in mid-1981 when the Independent group withdrew their support. As a result, a new coalition government was formed that comprised the Independent and National Democratic and People’s Alliance Party (PAP) under the leadership of Solomon Mamaloni’s PAP; this coalition remained in power until the national elections in 1984.²⁰²

²⁰⁰ Larmour, ‘Solomon Islands’, 80.

²⁰¹ Larmour, ‘Solomon Islands’, 80.

²⁰² Steeves, J.S. (1996). ‘Unbounded Politics in the Solomon Islands Leadership and Party Alignments.’ *Pacific Studies*, 19(1): 115-138, 121.

The new coalition government advocated ‘an economic strategy that invited foreign investment and tourism’ in order to create change.²⁰³ It published a Program of Action 1981-1984 aimed at laying ‘a new foundation for sound development within the next ten years’.²⁰⁴ This Program was to be implemented in three phases. The first phase (October 1981-March 1982) was concerned with reviewing the existing situation in key areas and developing new programs. In Phase 1, the government identified land problems as a key area to be addressed so as to create an environment favourable for economic development. The government would pursue a policy of establishing ‘Customary Land Boards in all Provinces with the aim of recording boundaries and genealogies associated with customary land ownership. This was to be done in consultation with the Province’.²⁰⁵ It envisaged that the implementation of this policy would commence in Phase 2 (April-Dec 1982) and would continue into Phase 3 (January 1983 - March 1984). However, this implementation timeframe did not proceed as planned, due to financial constraints, and as 1984 was the national election year, so the government’s focus was on re-election.

After the 1984 national election, Kenilorea managed to put together a coalition government under his leadership, but he resigned in December 1986 after he lost the confidence of cabinet due to his handling of French relief funds to repair his home village damaged by Cyclone Namu. The position of Prime Minister was passed on to Ezekiel Alebua, his deputy prime minister, who held on until the national elections in 1989.²⁰⁶ The governments of Kenilorea

²⁰³ Premdas, R.R. and Steeves, J.C. (1981). ‘The Solomon Islands: First Elections after Independence.’ *The Journal of Pacific History*, 16(4): 190-202, 195.

²⁰⁴ Government of Solomon Islands. (1981). Program of Action 1981-1984. Honiara, SIG, 1.

²⁰⁵ Government of Solomon Islands, Program of Action 1981-1984; Larmour, ‘Solomon Islands’, 80.

²⁰⁶ Steeves, ‘Unbounded Politics in the Solomon Islands Leadership and Party Alignments’, 121.

(now Deputy Prime Minister) and his successor Alebua were struggling with the difficult economic circumstances arising from the impacts of Cyclone Namu.²⁰⁷ The cyclone caused many people to become homeless and more than one hundred lives had been lost. It also caused extensive damage to the rice, coconut, timber, cocoa, palm oil and coffee industries, thus destroying decades of land reform initiatives. These and other effects such as damage to infrastructure initiated a fiscal crisis, which provided the basis for the Ministry of Economic Planning to estimate that it would take seven years for the economy to recover.²⁰⁸ Governments in the 1990s attempted to resolve this difficult economic situation through legislative reforms.

Following the 1989 national elections, Mamaloni's PAP won a majority of the parliamentary seats and formed a single government. This electoral victory 'was seen to provide the spring board for major economic reform'.²⁰⁹ PAP's platform for economic reform was adopted in response to the structural adjustment measures advocated by the International Monetary Fund (IMF). As Jeffrey Steeves points out, these measures included the following directions:²¹⁰

restraining fiscal expenditure, promoting the private sector and foreign investment, privatizing public-sector commercial activity, seeking economic diversification, emphasizing rural development and the role of provincial government, and restructuring financial institutions.

²⁰⁷ Chevalier, C. (2015). Understanding Solomon Writing the Life of Solomon Mamaloni, an Account of the Social Organisation, Magic and Religion of the People of San Cristoval in the Solomon Islands. In Corbett, J. and Lal, B. (eds), *Political Life Writing in the Pacific: Reflections on Practice*. Canberra, ANU ePress, 33-46.

²⁰⁸ Britton, N.R. (1987). 'Disaster in the South Pacific: Impact of Tropical Cyclone "Namu" on the Solomon Islands, May 1986.' *Disaster*, 11(2): 120-133, 131.

²⁰⁹ Steeves, 'Unbounded Politics in the Solomon Islands Leadership and Party Alignments', 123.

²¹⁰ Bennett, J.A. (2000). *Pacific Forests: A History of Resource Control and Contest in Solomon Islands, c.1800-1999*. Cambridge, The White House Press, 340.

By October 1990, Mamaloni's leadership style was under challenge from PAP members through a no confidence motion, because so little had been achieved since his government came into power.²¹¹ Mamaloni headed off the challenge by resigning from PAP and forming the National Unity and Reconciliation coalition government. He remained as Prime Minister until 1993 and continued to take a cautious approach in implementing the reform measures.

In November 1990, Mamaloni's newly formed coalition government introduced new investment legislation and amended the income tax law as part of its reform agenda. These laws, as revealed by the Minister for Commerce and Industries, Michael Maina, during the bills stage in Parliament, were 'incentives ... designed to attract investment in the areas of import substitution, exports and tourism'.²¹² Andrew Nori, then Leader of the Opposition, in his deliberation on the investment legislation, highlighted the relationship between investment and factors such as rule of law, law and order, efficiency and quality of public service, financial system and land tenure.²¹³

Nori argued that the existing customary land tenure system was not conducive to investment from overseas. Therefore, the government 'should put as its priority rationalisation of ... [the] land tenure system' because people continued to fight over land and spend more time in court than on the farm: under these terms 'land does not become an asset, it becomes a liability'.²¹⁴ Nori's narratives resonated with the law and development discourse, which places emphasis

²¹¹ For detailed discussion on why there was loss of support for Mamaloni's leadership see: Steeves, 'Unbounded Politics in the Solomon Islands Leadership and Party Alignments'.

²¹² National Parliament of Solomon Islands. (1990). Fourth Session – Twenty Sixth Meeting: Parliamentary Debates (Hansard), Meeting of November 12-November 23 1990, 192.

²¹³ National Parliament of Solomon Islands. (1990). Fourth Session – Twenty Sixth Meeting, 192-207.

²¹⁴ National Parliament of Solomon Islands. (1990). Fourth Session – Twenty Sixth Meeting, 207.

on the rule of law as the basic frame for the facilitation of development. I suggest Nori's narratives reflected the thinking at that time, which provided the impetus for the government to introduce the customary land recording legislation, to be discussed in Chapter 7.

6.7 Conclusion

This chapter has examined the various attempts by the successive colonial and independent governments to conduct land reform from the 1950s to the early 1990s in Solomon Islands. I have identified those individuals who drafted land law as well as those involved in the process of reviewing it. The roles and backgrounds of those individuals as actors were central to the design, review and implementation of the land law. The individuals who were involved as key actors in the land law reform process had a wealth of experience through training and working in other countries. They were part of a global flow of people and ideas about development that moved from one colony to another.

One of the lessons that could be drawn from this era of land law reform was that the laws introduced were the products of individuals such as Peter Brett (lawyer) and Ian Morgan (Registrar of Titles) whose areas of expertise were narrow, while their knowledge of customary land tenure in Solomon Islands was inadequate. These individuals came from one node in a network that extended from the University of Melbourne to the Colonial Office, with particular experience in places such as Brunei in Southeast Asia and Kenya in Africa. Brett, as the initial drafter of the Land and Titles legislation, and Morgan, who drafted subsequent amendments to this principal legislation, both imported provisions or terms from countries where they had previously been involved in drafting their laws. This shows that how western ideas to property rights travel between countries is not consistent or universal

but rather is translated in different ways in different context, that is why it is important to pay attention to who is responsible for transmitting the ideas.

The land laws drafted during this period were attempts to use law as a tool for transforming customary land into registered property estates, in order to create social change and facilitate development. However, despite attempts at implementation of the new land laws, there was little social change created. What was evident was that, after the passing of the Land and Titles Act 1959, the government's focus was more on improving the process of implementation by passing amendments rather than changing the substance of the law. As Solomon Islands moved towards Independence in 1978, the colonial government became increasingly conscious of land issues. It established a number of committees to investigate customary land issues and make recommendations for improvement.

The thinking then was along the lines of bringing customary law into the state legal system. A series of assertions were made by political actors and the general public in regard to the recording and registration of customary land. One of the primary issues was how to promote viable economic development on customary land. In a strongly nationalist move, an amendment to the land legislation was introduced in 1977 to end the perpetual estate ownership of land by foreigners, with further provision in the Constitution of the independent Solomon Islands to prevent foreigners from permanently owning land.

The Land Research Project set up in 1978 - 1979 was not presented as a solution to land issues in Solomon Islands. Rather, its focus was on bringing Solomon Islanders into research and public discussion about land issues and policy, with their findings then feeding into policy from the new government. However, despite the good intentions of the Land Research

Project, its findings were not acted upon and translated into policy to shape land law reform. From 1980-1984, the government came up with a program of action that included the recording of customary land. It was not until the early 1990s that the government moved to enact legislation that would provide for this process.

CHAPTER 7: Contemporary Land Reform in Solomon Islands

7.1 Introduction

This thesis has addressed the role of key actors who were influential in shaping land law reform in Solomon Islands during the colonial period and in the years following Independence. In these last two chapters, I turn to focus on contemporary actor roles and networks, and how they continue to shape unfolding attempts at land law reform. This chapter builds on the preceding chapters to highlight how a focus on actor roles provides a useful perspective through which to view attempts at land law reform in Solomon Islands from the early 2000s until the present. My aim in this chapter is to examine how issues such as structural adjustment reforms, land registration, and law and development approaches are shaping the way contemporary actors think and approach land reform. These frames are important in and of themselves, but here they are addressed as part of the ideological backgrounds of those key actors who are currently engaged in land reform in Solomon Islands.

This chapter focuses on two contemporary land reform processes, which I refer to as “the Andrew Nori reform proposal” and the “Solomon Islands land program”. A central aspect of these processes is the narrative on customary land recording as a mechanism for creating certainty of tenure. I argue that land reform is a crucial part of the new rule of law discourse. Solomon Islands makes for a particularly interesting case study because it has been a focus for interventions in recent years. This chapter sets out to show how the current interest in land reform in Solomon Islands is not just a technical intervention, but also a deeply political one,

situated within the global resurgence of interest in rule of law. The first part of this chapter focuses on Andrew Nori's land reform proposal and then discusses recent land programs in Solomon Islands. The latter section then explores a recent land reform program in which I was involved as an actor.

7.2 Andrew Nori's Proposals

From the 1990s until his untimely death in 2013, one of the key individuals influencing the land reform process in Solomon Islands was Andrew Nori, one of the first Solomon Islanders to be qualified as a lawyer. Nori had been a law student at the University of Papua New Guinea (UPNG) during the 1970s, a dynamic period in the decolonisation of both PNG and Solomon Islands. The UPNG Law Faculty was one of the institutions that contributed to the modernizing development of customary land.¹ When Professor A.B. Weston, formerly the Dean of Law in Tanzania, was appointed head of the UPNG Law Faculty from 1970-74, he introduced a number of profound changes. He introduced two required courses in customary law and land tenure. Major portions of other courses such as the introduction to law, property law, criminal law, family law and torts, were also devoted to the role of customary law.² Second, he recruited individuals such as Peter Bayne (Australia), Abdul Paliwala (Tanzania) and Ikenna Nwokolo (Nigeria).³ These academics had prior experience working in Africa which shaped their teaching, including their perspective on customary law. It was this specific environment at UPNG, heavily influenced by African thinking on customary land,

¹ Weisbrot, D. (1981). 'Customizing the Common Law: The True Papua New Guinea Experience.' *American Bar Association Journal*, 67(6): 727-731, 730.

² Weisbrot, 'Customizing the Common Law'.

³ Weisbrot, 'Customizing the Common Law',

which shaped Nori's professional formation as a lawyer, and his subsequent advocacy of a particular approach to land reform in Solomon Islands.

Nori was from Waisisi on the south-east coast of Malaita. His father, Nori, had been one of the leaders of Maasina Ruru, the famed Malaitan socio-political movement of the 1940s.⁴ Many Malaitans came to see him as the most important island-wide leader of the movement. Nori was elected Member of Parliament for West Are'Are constituency for three terms, from 1984 to 1996. During his first term, Nori was Minister of Home Affairs and Provincial Government. He later became head of the Nationalist Front for Progress, and Leader of the Opposition. He was appointed Minister of Finance in 1993 but resigned towards the end of 1994. As an MP, minister, leader of a political party and lawyer, Nori was in a position over a long period of time to influence government narratives on land issues, and particularly in the recognition of local customary institutions involved in managing customary land. He was able to translate this approach through parliamentary debates as part of the process of lawmaking.

Nori stated that he had decided to become an MP with two aims: the first was to make customary land a national issue in Parliament, and one central to any discussion of economic development; the second was to influence Parliament to reexamine its approach to leadership structures.⁵ During Nori's first term in Parliament, he introduced a private members bill

⁴ David Akin provides a recent account of the Maasina Ruru Movement: Akin, D.W. (2013). *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*. Honolulu, University of Hawai'i Press and the Centre for Pacific Islands Studies.

⁵ Nori's Speech. (January 1994). Bills, Second Reading - The Customary Land Records Bill 1994 (Hansard). Honiara, National Parliament of Solomon Islands, 442-446, 443.

proposing a further amendment to the court structure in 1985. This amendment provided the legal basis for the return of powers dealing with customary land issues to traditional leaders, particularly chiefs.⁶ He was also instrumental in the drafting of the Are-Are Customary Land Code 1989. Nori's actions revealed that he was interested in the scope for the codification of custom. He also wanted the state to integrate traditional leaders such as chiefs as part of the formal legal system to deal with customary land disputes. The term 'tradition' in western culture has commonly been perceived as a static phenomenon, and has been central to debates about the distinction between authentic and inauthentic, or traditional and modern.⁷ In most non-western cultures, traditions 'change with the demands of the times, in an organic way, or in a conscious effort to retain relevance to their audiences'.⁸ What is perceived and labelled as tradition is itself a product of social change.⁹ Static roles cannot be assumed for Solomon Islands leaders who have authority to deal with issues of customary land in accordance with the rules of custom. Several scholars have demonstrated the many changes in tradition since the 19th century, with an enlarged power and status of many traditional chiefs. Since Woodford's time, many so-called chiefs have found greatly expanded roles in the opportunities provided by government, business and the churches.¹⁰

⁶ The amendment is referred to as the Local Courts (Amendment) Act 1985.

⁷ Mallon, S. (2010). 'Against Tradition.' *The Contemporary Pacific*, 22(2): 362-381.

⁸ Huib, S. (2006). 'Tradition, Authenticity and Context: The Case for a Dynamic Approach.' *British Journal of Music Education*, 23(3): 333-349, 335.

⁹ Gusfield, J.R. (January 1967). 'Tradition and Modernity: Misplaced Polarities in the Study of Social Change.' *American Journal of Sociology*, 72(4):351-362, 353.

¹⁰ Bennett, J.A. (1987). *Wealth of the Solomons: A History of a Pacific Archipelago*. Honolulu, University of Hawaii Press.

Nori's commitment to bringing customary law into the state legal system reflected his training at UPNG, but it was also an extension of earlier attempts by members of the Maasina Ruru movement to document customary law, establish custom courts and run their own custom councils as a form of resistance to colonial control.¹¹ Nori must have learned about the movement from his family because his father had passed away when he was still a child, and he appears to have been inspired by his father's role in the movement. Nori thus used his political position and legal skills to push for legislative amendments to bring traditional institutions into the formal legal system.

Nori's 1985 private member's bill introduced an amendment to the Local Court's Act. This legislation stipulates that chiefs or other traditional leaders residing within the locality should hear and determine a land dispute before it can be referred to the Local Court.¹² When the 1985 amended law came into effect, many parts of Solomon Islands, including my home area of Lau in North Malaita, had to create traditional leadership structures such as chiefly councils or panels in order to hear land disputes. This innovation created problems in terms of capacity and the process of identifying chiefs in certain localities. Due to the changing nature of customary practices, the authenticity of chiefs has also been questioned in some areas.¹³

¹¹ Akin, *Colonialism, Maasina Rule, and the Origins of Malaita Kastom*.

¹² Discussion of the Local Courts (Amendment) Act 1985 see: Corrin, J. (2011). 'Customary Land in Solomon Islands: A Victim of Legal Pluralism.' *Revue Juridique Polynésienne*, 12(Special Issue): 277-305, 295.

¹³ Corrin, 'Customary Land in Solomon Islands', 295.

Nori's commitment to bringing customary law into the formal legal system was far from unique. The goal of transforming customary law to become part of the state legal system has been on the national government agenda of countries in the Melanesian region during the late colonial era and after independence.¹⁴ This goal was shaped by colonial experiences where the application of customary law in countries like Solomon Islands, Papua New Guinea and Vanuatu was tolerated but its 'role in the formal system was restricted to minor matters'.¹⁵ Papua New Guinea, like Vanuatu, decided to draw on custom partly as a unifying ideology for independence.¹⁶ Due to the importance placed on custom, it found its way into the independent Constitutions of PNG in 1975, Solomon Islands 1978 and Vanuatu 1980, as a source of law.¹⁷

Nori was one of the key actor pushing for the reform of land as an MP during the early post-Independence period. During a parliamentary debate in 1990, he stressed that if he was going to be given a medal 'it must be a medal for talking about customary land'.¹⁸ He insisted that

¹⁴ For a detailed discussion on the debates regarding custom and the formal legal system in Melanesia see: Forsyth, M. (2009). *A Bird That Flies with Two Wings: Kastom and State Justice Systems in Vanuatu*. Canberra, ANU ePress; see also Narokobi, B. (1989). *Lo Bilong Yumi Yet: Law and Custom in Melanesia*. Suva, Melanesia Institute for Pastoral and Social Economic Service, University of the South Pacific.

¹⁵ Corrin Care, J. (2001). 'Customary Law in Conflict: The Status of Customary Law and Introduced Law in Post-colonial Solomon Islands.' *Commonwealth Law Bulletin*, 27(2): 1290-1303, 1292.

¹⁶ Zorn, J.G. (1990). 'Customary Law in the Papua New Guinea Village Courts.' *The Contemporary Pacific*, 2(2): 279-311, 279; see also McDonnell, S. (2016). *My Land, My Life: Property, Power and Identity in Land Transformations in Vanuatu*. Australian National University, PhD Thesis.

¹⁷ Section 9, Papua New Guinea Constitution; Schedule 3, Solomon Islands Constitution and Article 95(3), Vanuatu Constitution. Literature on the relationship between custom as a source of law and state formal laws includes: Forsyth, *A Bird That Flies with Two Wings*; Forsyth, M. (2004). 'Beyond Case Law: Kastom and Courts in Vanuatu.' *Victoria University of Wellington Law Review*, 35:427-446; Corrin, J. (2011). 'Customary Land in Solomon Islands'; Corrin, J.C. (1985). 'Sources of Law under the Constitution of Vanuatu.' *Queensland Institute of Technology Law Journal*, 16: 225-233.

¹⁸ Nori's speech. (1990). Fourth Session – Twenty Sixth Meeting, Parliamentary Debates (Hansard). Meeting of 12-23 November 1990. Honiara, National Parliament of Solomon Islands, 194-208, 207.

the status of investment in Solomon Islands depended on features such as whether the rule of law was working and the nature of the local land tenure system. Nori's perception was that Solomon Islands customary land tenure was problematic due to legal uncertainties regarding ownership.¹⁹ The situation was not attractive for overseas investment because local people continued to fight over land and people were 'spending more time in courts than on the farm'.²⁰ He proposed the government should put as its priority the rationalisation of Solomon Islands land tenure systems.²¹ Nori's perception of customary land in Solomon Islands as a problem resonated with the dominant conceptual perspective of neo liberal actors and institutions on customary land as a hindrance to economic development. He internalised this perspective to advance the assumption that changing the law would provide the basis for ascertaining landownership. This would then address the issue of land disputes in Solomon Islands and from this resolution investment would flow. Such an assumption was uncritical because it assumed that law was an unproblematic tool for creating social change.

The assumption that changing the law would change the relationship of land to facilitate investment shaped Nori's thinking about land recording. He became involved in the drafting of the Customary Land Records Act 1990 with the support of a British national, George Scott. As an MP, Nori was involved in debating the legislation in Parliament. As the Minister of Finance he was part of the ruling government that pushed for the enactment of Customary

¹⁹ Nori, A. (November 1998). *Customary Land Recording: Underlying Issues*. The National Summit, Honiara, Solomon Islands.

²⁰ Nori's speech, Fourth Session – Twenty Sixth Meeting, Parliamentary Debates (Hansard).

²¹ Nori's speech, Fourth Session – Twenty Sixth Meeting, Parliamentary Debates (Hansard).

Land Records Act in 1994.²² This legislation provided for the recording of customary land boundaries and landholding groups. These groups are empowered to appoint their representatives to deal with any recorded landholding. The Act also required the government to establish a National Record, a Central Land Record Office and provincial Land Record Offices.²³ This legislation foregrounded the role and importance of codification, assuming that once boundaries and landholding group interests had been recorded, they would remain fixed. The management of these records was to be removed from customary institutions, becoming part of the state apparatus, to be accessed and interpreted by lawyers.

The Solomon Islands proposals resembled the Fijian codification of customary land tenure systems, as advocated by Sir Arthur Hamilton Gordon, later Lord Stanmore. Administrative confusion over land titles acquired by settlers²⁴ led Gordon to codify both land tenure and social structure in Fiji in a three-step process: first he established a Native Lands Commission in 1875 to deal with settler land claims, and record land boundaries and landowning units (from 1912, the records of this process were maintained in the *Vola ni Kawa Bula* or Native Land Register);²⁵ second, he created the Great Council of Chiefs in 1876; and third, based on The Native Land Ordinance 1880, he declared all customary land in Fiji to be inalienable.²⁶

²² Nori's Speech. (January 1994). Bills, Second Reading – The Customary Land Records Bill 1994 (Hansard). Honiara, National Parliament of Solomon Islands, 442-446.

²³ Discussion on the Customary Land Records Act see: Corin, 'Customary Land in Solomon Islands'.

²⁴ Sohmer, S.H. (1984). 'Idealism and Pragmatism in Colonial Fiji: Sir Arthur Gordon's native rule policy and the introduction of Indian contract labor.' *The Hawaiian Journal of History*, 18: 140-155.

²⁵ Jolly, M. (1992). 'Custom and the Way of the Land: Past and Present in Vanuatu and Fiji.' *Oceania*, 62(4): 330-354; see also Lal, B.V. (1992). *Broken Waves: A History of the Fiji Islands in the Twentieth Century*. Hawaii, University of Hawaii Press, 14.

²⁶ Ward, R.G. (1995). 'Land, Law and Custom: Diverging Realities in Fiji.' In Ward, R.G. and Kingdon, E. (eds), *Land, Custom and Practice in the South Pacific*. Cambridge, Cambridge University Press, 198-249, 207.

These three moves contributed to the freezing of customary land in Fiji, to be managed by a Native Land Trust (now the *iTauke* Land Trust Board) and available for lease to investors.

The policy underlying the Customary Land Records Act in Solomon Islands was initially developed by Scott as an attempt to protect and preserve the customary ownership of land. He was a technical expert recruited in the early 1980s, initially as an advisor before becoming Surveyor General, Ministry of Lands. Following retirement, he was appointed in 1990 as the Secretary to the newly established Tribal Lands Unit.²⁷ He later became the Secretary to the Land Recording Program in the mid-1990s. Scott advocated preserving tribal ownership of land through the establishment of a land recording administrative structure and land tribunal.²⁸ He promoted the implementation of the newly passed land recording legislation through media and a weekly radio program. He encouraged comment and debate on the new legislation to foster an understanding that would pave the way to the recording of customary land by landowners. However, as with so many previous initiatives, the ultimate goal of actually undertaking land recording failed to materialise due to financial constraints and lack of recruitment of a national recorder and other provincial recorders, as required by the new legislation.²⁹

²⁷ Cook, J. and Kofana, G.E. (2008). 'Recording Land Rights and Boundaries in Auluta Basin, Solomon Islands.' *Making Land Work, Vol 2, Case studies on customary land and development*. Canberra, Australian Agency for International Development, 47-63, 51.

²⁸ Scott, G. 'The Provinces and Customary Land Recording' from Judith Bennett's collection of forestry papers, PMB Doc 537/71.

²⁹ Information about George Scott obtained from Donald Kudu, former Permanent Secretary of the Ministry of Lands in the 1990s: email from Donald Kudu, 17/12/2015.

Interestingly, Nori was Minister of Finance during the period when the land recording program was being advocated in Parliament. Nori, who was presumably heavily influenced through his links to the Maasina Ruru movement by ideas of resistance against colonialism, came to embrace ideas and institutions that many people would associate with neo-colonialism. As Minister of Finance he was exposed to the idea of land mobilisation then being promoted by neoliberal Structural Adjustment Programs (SAPs) and designed by economists of the World Bank and International Monetary Fund (IMF).³⁰ These organisations, through loan arrangements, created conditions that influenced country borrowers, including those in Melanesia, to frame policy reforms that were in line with at least some of the Washington Consensus prescriptions associated with neoliberal ideas of market-led economic growth strategies.

The first adoption in the Melanesian region of a Structural Adjustment Program was in Papua New Guinea in the 1990s, as an attempt to repay the country's external debt of over US\$3 billion to international banks.³¹ The PNG government signed a tripartite agreement for a 'Land Mobilisation Program' in 1989 with the World Bank and the Australian International Development Assistance Bureau (AIDAB). Under the agreement the Lands Department was to be overhauled. The World Bank imposed on the PNG government certain terms and conditions under the SAP as the basis for giving a loan for the Land Mobilisation Program

³⁰ Veltmeyer, H. (1993). 'Liberalisation and Structural Adjustment in Latin America: In Search of an Alternative.' *Economic and Political Weekly*, 28(39): 2080-2086, 2080.

³¹ Editor. (March 1995). 'Papua New Guinea: The Joke of World Bank/IMF.' *Pacific News Bulletin*, 10(3): 8-10, 9; see also Barcham, M. (2002). 'The Politics of Economic Reform: The Failure of PNG's 1995 Structural Adjustment Programme,' *Revue Juridique Polynésienne*, 2(Special Issue): 193-212.

1989-1995.³² These terms and conditions reflected Williamson's Washington Consensus list of reform strategies.³³ A number of areas were to be 'improved and modernised', including the voluntary registration of customary land.³⁴

However, the proposal for a reform program for customary land in PNG stimulated a heated public debate, which resulted in violent protests and even loss of life. In the provincial town of Goroka police fired tear gas to disperse a crowd of about 5,000 people protesting over the land reforms. In Oro Province, an angry crowd joined forces with university students to protest against the controversial reform proposals.³⁵ The PNG government's attempt at land reform was called off in 1996 following the violent response.³⁶ Considering the government's limited capacity to implement land reform, it was no surprise that the planned land mobilisation project would fail. This is a point that has been analysed by scholars such as Chris Ballard focusing 'on the [limited] extent to which the state's authority as the arbiter of social good is acknowledged'.³⁷

³² Discussion on the inception of the Land Mobilisation Program see: James, R.W. (1990). 'Land Mobilisation Program in Papua New Guinea.' *Melanesian Law Journal*, 18: 38-52, 39.

³³ The Washington Consensus was a term first used by John Williamson to refer to a list of ten macroeconomic policy reform strategies, with specific reference to Latin America. This list is as follows: 'fiscal discipline, public expenditure priorities, tax reforms, interest rates, exchange rates, trade liberalisation, foreign direct investment, privatisation, deregulation and enforcement of property rights': Naim, M. (2000). 'Washington consensus or Washington confusion?' *Foreign Policy*, 118: 86-103, 89.

³⁴ Editor. (August 1995). 'Papua New Guinea: Focus on Land.' *Pacific News Bulletin*, 10(8): 7.

³⁵ Editor, 'Papua New Guinea: Focus on Land'.

³⁶ Kalit, K. and Young, E. (1997). 'Common Property Conflict and Resolution: Aboriginal Australia and Papua New Guinea.' In Larmour, P. (ed.), *The Governance of Common Property in the Pacific Region*. Canberra, ANU Press, 183-204, 184.

³⁷ Ballard, C. (1997). 'It's the Land, Stupid! The Moral Economy of Resource Ownership in Papua New Guinea.' In Larmour, P. (ed.), *The Governance of Common Property in the Pacific Region*. Canberra, ANU Press, 47-66, 57.

During this period Solomon Islands experienced a ‘falling real aid per capita, rising Government debt’ and a ‘fiscal crisis because the government [had] failed to meet its debt obligation in August 1995’.³⁸ A major reason for government indebtedness was its failure to regulate logging, itself connected arguably not just to its weak capacity but also to its past failure to codify land tenure, to define landowning groups and to map their territories.³⁹ As pointed out by Gordon Darcy Lilo, the fiscal crisis was ‘triggered by a consistently high budget deficit owing largely to poor policies and gross mismanagement’.⁴⁰ This was further exacerbated by the Asian Financial Crisis, which saw a collapse in log exports.⁴¹ In the 1997 national elections, Nori was unseated as a Member of Parliament, but he continued to promote the Customary Land Records Act, arguing that it ‘was the most important legislative initiative since independence, apart from the formal adoption of [the] Constitution in July, 1978’.⁴²

³⁸ Tisdell, C. (2000). *The Development of the Solomon Islands: An Analysis of Trends, Issues and Policies*. Brisbane, St Lucia, University of Queensland, 4.

³⁹ Bennett, J. (1995). ‘Forestry, Public Land and the Colonial Legacy in Solomon Islands.’ *The Contemporary Pacific*, 7(2): 243-75; see also Fraser, I. (1997). ‘The Struggle for Control of Solomon Island Forests.’ *The Contemporary Pacific*, 9(1): 39-72; Dauvergne, P. (1998). ‘Corporate Power in the Forests of the Solomon Islands.’ *Pacific Affairs*, 71(4): 524-546; Bennett, J.A. (2000). *Pacific Forests: A History of Resource Control and Contest in Solomon Islands, c.1800-1999*. Cambridge, The White House Press; Kabutaulaka, T.T. (2001). *Paths in the Jungle: Landowners and the Struggle for Control of Solomon Islands' Logging Industry*. Australian National University, PhD Thesis; Wairiu, M. (2007). ‘History of the Forestry Industry in Solomon Islands: The Case of Guadalcanal.’ *The Journal of Pacific History*, 42(2): 233-246.

⁴⁰ Lilo, G.D. (June 2000). ‘Hard Times Ahead? Issues and Reforms in Solomon Islands public finance.’ Paper to Pacific Updates on Solomon Islands, Fiji and Vanuatu. Canberra, Australian National University; for outline of factors causing the budget deficit see: Tisdell, *The Development of the Solomon Islands*.

⁴¹ Allen, M.G. (2011). ‘The Political Economy of Logging in Solomon Islands.’ In Duncan, R. (ed), *The Political Economy of Economic Reform in the Pacific*. Philippines, Asian Development Bank, 277-301.

⁴² Nori, A.C.H. (1998). *National Summit: Customary Land Recording*. Honiara, Solomon Islands,

When the Solomon Islands Alliance for Change (SIAC) government under the leadership of Bartholomew Ulufa'alu came into power in 1997, they inherited the financial difficulties of past governments. As a result, like PNG, they introduced a Policy and Structural Adjustment Program. The SIAC government consequently pursued a macroeconomic reform agenda with assistance from the Asian Development Bank, the World Bank and the International Monetary Fund (IMF). The reform measures included devaluation of the currency by 20%, 'pursuance of tight fiscal and monetary policies, pursuance of a wage moderation policy, public service reform, privatisation and reform of state owned enterprises and joint venture companies, and more consultation between the government and other stakeholders'.⁴³ The reform measures conformed closely to the neoliberal economic agenda of the World Bank and IFM. Where global ideas had previously been imported to Solomon Island by colonial officials and consultants, now, through the influence of international financial institutions, they were becoming internalised by the Solomon Islands government in reshaping its reform agenda.

The Solomon Islands' Structural Adjustment Program was aimed at the restructuring of government finances, the reduction of external debt, and the privatization and downsizing of the public service.⁴⁴ Consequently, in March 1999, once the government handed redundancy payouts to a number of its public service employees, 'cleared its debt areas using funds provided by the Asian Development Bank and World Bank, and the government budget had

⁴³ Tisdell, *The Development of the Solomon Islands*.

⁴⁴ World Bank. (1999). *Solomon Islands - Structural Adjustment. Credit Project*. Washington DC, World Bank; see also Maebuta, J. (2014). 'Building Peace in Post-Conflict Solomon Islands: Socio-economic and Political Issues and Challenges.' In Ware, H., Jenkins, B., Branaga, M. and Subedi, D. (eds), *Cultivating Peace: Contexts, Practices and Multidimensional Models*. UK, Cambridge Scholars Publishing, 116-131, 126.

swung back into surplus'.⁴⁵ While the structural adjustment reforms provided the catalyst for these macroeconomic improvements, the reforms provoked considerable resistance within the public sector. I suggest that the reforms also contributed to political instability and the civil uprising known as the Tensions.⁴⁶

The SIAC government's reforms were soon derailed and came to an abrupt halt with the attempted coup by the Malaita Eagle Force (MEF) on 5 June 2000. Nori played a central role in the attempted coup, acting as the legal adviser and spokesperson for MEF. He was involved in demanding that Bartholomew Ulufa'alu resign as Prime Minister due to his failure to address the violent eviction of settlers (mostly Malaitan) by Guadalcanal militants.⁴⁷ A considerable body of literature has been published on the nature of this civil unrest. These studies generally emphasise the role of socio-economic problems as the cause of civil unrest, including access to land, squatting on customary land, and the unsustainable extraction of natural resources such as timber.⁴⁸

⁴⁵ Fraenkel, J. (2004). *The Manipulation of Custom: From uprising to intervention in the Solomon Islands*. Wellington, Victoria University Press, 41.

⁴⁶ Matthew Allen and Shahar Heimeri make a similar point: see Allen, M. (2011). 'Long Term Engagement: The Future of the Regional Assistant Mission to Solomon Islands.' Sydney, Australian Strategic Policy Institute; and Heimeri, S. (2007). 'The Trouble with RAMSI: Re-examining the Roots of the Conflict in Solomon Islands.' *The Contemporary Pacific*, 19(2): 409-41.

⁴⁷ On the 5 June 2000 coup see: Fry, G. (2000). 'Political Legitimacy and the Post-Colonial State in the Pacific: Reflections on Some Common Threads in the Fiji and Solomon Islands Coups.' *Pacifica Review: Peace, Security & Global Change*, 12(3): 295-304; Dinnen, S. (2002). 'Winners and Losers: Politics and Disorder in the Solomon Islands 2000-2002.' *Journal of Pacific History*, 37(3): 285-298; Wainwright, E. (2003). 'Responding to State Failure - The Case of Australia and Solomon Islands.' *Australian Journal of International Affairs*, 57(3): 485-498; McDougall, D. (2004). 'Intervention in Solomon Islands.' *The Round Table*, 93(374): 213-223; Kabutaulaka, T.T. (2005). 'Australian Foreign Policy and the RAMSI Intervention in Solomon Islands.' *The Contemporary Pacific*, 17(2): 283-308.

⁴⁸ Kabutaulaka, T.T. (2001). 'Beyond Ethnicity: The political Economy of the Guadalcanal Crisis in Solomon Islands.' Australian National University, State, Society & Governance, Working Paper 01/1. Canberra, ANU; Bennett, J. (2002). 'Roots of Conflict in Solomon Islands-Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism.' Australian National University, State Society and Governance in Melanesia,

The civil unrest in Solomon Islands was associated with a major breakdown of law and order, and the country was considered to be drifting towards state failure. Government institutions were showing signs of becoming dysfunctional due to corruption and the police forces were compromised and increasingly partisan. The Solomon Islands government, now under the leadership of Prime Minister Allan Kemakeza, approached Australia in early 2003 for assistance to address the national law and order problem. Australia responded, with the support of the Pacific Islands Forum,⁴⁹ by creating the Regional Assistant Mission to Solomon Islands (RAMSI), an attempt at regional action to post-conflict intervention.⁵⁰ This was done within the framework of the Biketawa Declaration of 2000, which outlined the commitments made by member countries of the Forum to a number of guiding principles that included the rule of law, good governance, upholding democratic processes, and human rights.⁵¹

Australia was the main contributor to RAMSI, providing ninety percent of its funding. RAMSI was deployed to Solomon Islands from July 2003, with a primary mandate of restoring the rule of law, reforming government machinery, and rebuilding the Solomon

Discussion Paper 2002/5. Canberra, ANU; Fraenkel, *The Manipulation of Custom*; Allen, M.G. (2012). 'Land, Identity and Conflict on Guadalcanal, Solomon Islands.' *Australian Geographer*, 43(2): 163-180.

⁴⁹ The Pacific Islands Forum is a regional organization composed of sixteen member countries from the Central and South Pacific.

⁵⁰ For legislation that provided the legal framework for the work of RAMSI in Solomon Islands see: Facilitation of International Assistance Act 2003 (No. 1 of 2003).

⁵¹ Pacific Islands Forum Secretariat, *Biketawa Declaration of 2000*. Online <<http://www.forumsec.org/pages.cfm/political-governance-security/biketawa-declaration/>> (Accessed 2/11/2016); see also Fullilove, M. (Autumn 2006). 'RAMSI and State Building in Solomon Islands.' *Defender*: 31-35.

Islands economy.⁵² RAMSI's immediate priority was the restoring of the rule of law, which was largely re-imposed within a few months. Many former militants were charged and imprisoned due to either human rights abuses or criminal offences. Those with guns were disarmed. Nori, who had played a key role as legal advisor and spokesperson for MEF, secured impunity while others that he influenced ended up in jail.⁵³

The reform measures pursued by Australia under the RAMSI program, aimed at establishing good governance and creating economic growth, were consistent with the structural adjustment programs of the 1990s. They imposed major cuts on government spending, created public sector redundancy packages, and applied pressure on customary landholding arrangements.⁵⁴ The investment climate in Solomon Islands started to improve in 2004 as businesses picked up pace and revenue from industries such as logging began to increase.⁵⁵ The RAMSI program contributed to creating a good governance environment, which provided a climate conducive for increased logging activity.⁵⁶ This 'helped reinforce pre-existing patterns of accumulation and attendant power structures'.⁵⁷ One example of this was

⁵² A number of scholars have written about the Solomon Islands ethnic tension, see for example: Kabutaulaka, 'Beyond Ethnicity'; Bennett, *Roots of Conflict in Solomon Islands*; Moore, C. (2004). *Happy Isles in Crisis: The Historical Causes for a Failing State in the Solomon Islands, 1998-2004*; Fraenkel, *The Manipulation of Custom*.

⁵³ Braithwaite, J, Sinclair Dinnen, Allen. M, Braithwaite and Charlesworth, H. (2010). *Pillars and Shadows: State Building as Peacebuilding*. Canberra, ANU ePress, 89.

⁵⁴ Hameiri, 'The trouble with RAMSI', 432.

⁵⁵ Moore, C. (2005), 'The RAMSI Intervention in the Solomon Islands Crisis.' *The Journal of Pacific Studies*, 28(1): 56-77, 58-59.

⁵⁶ Hameiri, S. (2012). 'Mitigating the Risk to Primitive Accumulation: State-Building and the Logging Boom in Solomon Islands.' *Journal of Contemporary Asia*, 42(3): 405-426, 406.

⁵⁷ Hameiri, 'Mitigating the Risk to Primitive Accumulation', 407.

Nori, who started venturing into logging around 2004. Due to his ‘strong links with logging’ he acted as a key broker in the introduction of logging in Waisisi, his home area.⁵⁸

7.3 Good Governance and the Land Program.

RAMSI’s broad mandate was consistent with the good governance narrative embraced by donor countries such as Australia and regional organisations such as the Pacific Islands Forum. The term ‘governance’ appeared consistently in the development discourse from about the late 1980s, as a conceptual frame promoted to link development failure in places such as Africa to poor governance.⁵⁹ This frame influenced ‘Western donors to pursue a more politically engaged approach, with greater emphasis on public administration, democratization and human rights as integral to the development project’.⁶⁰

AusAID defined good governance as the ‘competent management of a country’s resources and affairs in a manner that is open, transparent, equitable and responsive to people’s needs’;⁶¹ achieving this goal would require ‘the primacy of the rule of law, maintained through an impartial and effective legal system’.⁶² This definition of good governance emphasises the primacy of institutions because they act to protect property rights and promote

⁵⁸ Radio New Zealand. (December 2004). ‘Solomons Lawyer Calls for Redrafting of Forestry Bill.’ <<http://www.radionz.co.nz/international/pacific-news/151999/solomons-lawyer-calls-for-redrafting-of-forestry-bills>> (Assessed 3/11/2017).

⁵⁹ World Bank. (1989). *Sub-Saharan Africa: From Crisis to Sustainable Growth*. Washington DC, World Bank, 60; see also Corbett, J. and Dinnen, S. (2016). ‘Examining Recent Shifts in Australia’s Foreign Aid Policy: New Paradigm or More Incremental Change?’ *Australian Journal of International Affairs*, 70(1): 87-103.

⁶⁰ Corbett and Dinnen, ‘Examining Recent Shifts in Australia’s Foreign Aid Policy’, 91.

⁶¹ AusAID. (2000). *Good Governance: Guiding Principles for Implementation*. Canberra, Australian Agency for International Development (AusAID), 3.

⁶² AusAID, *Good Governance*.

economic development.⁶³ The rise of this approach meant that the state was ‘increasingly brought back to the center of development debate’.⁶⁴ The World Bank identified the rule of law as a characteristic of good governance that would ‘stimulate economic growth and attract foreign investment’.⁶⁵

This shift in the development paradigm, which was largely internalised by development actors, contributed significantly to shaping the debate on customary land reform. This was evident in the World Bank’s 2003 report entitled *Land Policies for Growth and Poverty Reduction*.⁶⁶ This report represented a change in the World Bank’s conceptual perspective from its earlier position, as documented in its *Land Reform Policy Paper* of 1975. The earlier perspective promoted transforming customary land tenure into individualised property rights arrangements.

In contrast, the Bank’s 2003 report was consistent with the good governance frame and promoted a ‘human centered approach to reform’.⁶⁷ The report recognised that, under certain conditions, customary land rights could be ‘more effective than premature attempts at establishing formalised structures’.⁶⁸ This indicated that the Bank advanced ‘an official

⁶³ Corbett and Dinnen, ‘Examining Recent shifts in Australia’s Foreign Aid Policy’.

⁶⁴ Corbett and Dinnen, ‘Examining Recent shifts in Australia’s Foreign Aid Policy’, 92.

⁶⁵ Trubek, D.M. (2006). ‘The ‘Rule of Law’ in Development Assistance: Past, Present, and Future.’ In Trubek, D.M. and Santos, A. (eds), *The New Law and Economic Development: A Critical Appraisal*. Cambridge, Cambridge University Press, 74-173, 85.

⁶⁶ World-Bank. (2003). *Land Policies for Growth and Poverty Reduction*. Washington, Oxford University Press.

⁶⁷ World-Bank, *Land Policies for Growth and Poverty Reduction*.

⁶⁸ World-Bank, *Land Policies for Growth and Poverty Reduction*, xxvii.

position that lauds the apparent flexibility, adaptability and negotiability of customary land holding'.⁶⁹ While the Bank's 2003 report recognised customary land holding arrangements, its analysis still insisted on the central role of the market. This was reinforced by discussions in the report on secure property rights, including the link between economic growth and poverty.

The World Bank's shift in conceptual perspective on customary land 'helped generate broad consensus among governments, donors and other stakeholders of the principles of intervention'.⁷⁰ It also influenced donors such as the United States (USAID), British (DFID) and Australian (AusAID) development agencies to consider land as a high priority in their aid programs.⁷¹ The World Bank considered good land governance as one of its more important priorities because it had been recognised that having an efficient land administration (including the institutional, legal and technical components) was 'critical to the benefits of land titling being realised'.⁷² In 2003, the Food and Agriculture Organisation (FAO), drawing on its own extensive field research along with that of the World Bank, provided guidelines for land administrators on good land governance.⁷³ These guidelines

⁶⁹ Silungwe, C.M. (2015). *Law, Land Reform and Responsibilisation: A perspective from Malawi's land question*. South Africa, Pretoria University Law Press, 11.

⁷⁰ Mitchell, D., et al. (2008). 'Evaluating Land Administration Projects in Developing Countries.' *Land Use Policy*, 25(4): 464-473, 465.

⁷¹ Mitchell, 'Evaluating Land Administration Projects in Developing Countries'.

⁷² Mitchell, 'Evaluating Land Administration Projects in Developing Countries', 466; see also Barnes, G. (2003). 'Lessons Learned: An Evaluation of Land Administration Initiatives in Latin America Over the Past Two Decades.' *Land Use Policy*, 20(4): 367-374.

⁷³ FAO. (2003). *Good Governance in Land Tenure and Administration*. Rome, Food and Agriculture Organisation of the United Nations, 9.

provide a good governance framework for developing countries with funding support from donors in the design and implementation of land administration projects.

Like the 2003 World Bank report, numerous aspects of the Australian aid program conformed to the good governance frame. One example was the Solomon Islands Institutional Strengthening of Land Administration Project (SIISLAP), through the Ministry of Lands, Housing and Survey. The project design approach was influenced by a similar project undertaken by AusAID in Papua New Guinea.⁷⁴ SIISLAP's first phase (2000-2004) focused on strengthening land administration and capacity in the Ministry of Lands, Housing and Survey (MLHS). Its second phase (2004-2007) focused on increasing the security of Temporary Occupation Licences (TOL) in Honiara and considering options for customary land registration.⁷⁵ SIISLAP introduced a perspective on land policy in Solomon Islands that AusAID and Solomon Islands actors have since internalised. This was based on the assumption that the lack of development in Solomon Islands was due to poor land administration arrangements.

Another example of the influence of this new paradigm was the Australian Government's assistance to the justice sector. This was made under the Solomon Islands Law and Justice Sector Institutional Strengthening Program (SILAJISP). The program provided for technical support for the reform of judicial and justice institutions, and included the

⁷⁴ Larden, D. and Sullivan, M. (2008). *Strengthening Land Administration in Solomon Islands*. Canberra, Australian Agency for International Development, 310.

⁷⁵ Fitzpatrick, D. and Monson, R. (2009). 'Balancing Rights and Norms: Property Programming in East Timor, the Solomon Islands, and Bougainville.' In Leckie, S. (ed), *Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations*. Cambridge, Cambridge University Press: 103-135, 119-120; for funding figures see: AusAID. (2004). *Pacific Program Profiles 2003-2004*. Canberra, Australian Agency for International Development (AusAID).

development of an institutional structure to address customary land disputes. When RAMSI arrived in July 2003, it provided additional assistance to the justice sector that involved the recruitment of additional lawyers and magistrates under SILAJSISP. In 2005 the Solomon Islands Government in partnership with RAMSI introduced the Solomon Islands Law and Justice Sector Program. This program promoted a good governance framework through the provision of aid support to the justice sector. Following RAMSI's success in restoring the rule of law and stabilising the machinery of government, the Solomon Islands Government started discussing national projects as part of its policy on rural development.

Malaita Province was identified as an important target for major national projects. This was consistent with the Townsville Peace Agreement of 2000 signed between the Isatabu Freedom Movement (IFM) of Guadalcanal, the Malaita Eagle Force of Malaita (MEF), the Solomon Islands Government, Guadalcanal Province and Malaita Province. Andrew Nori was the spokesperson and chief negotiator for MEF. The Townsville Peace Agreement provided for the negotiation of development incentives for both Malaita and Guadalcanal.⁷⁶ Two major national development projects proposed for Malaita were Waisisi Palm Oil in Are'Are and Auluta Basin Palm Oil in Fataleka. This was where the discussion on land mobilisation became crucial. The idea of customary land recording was pursued by Nori through a project on codification of customary land law for Are'Are. As Project Director, Nori, played a critical role in creating the Are'Are Customary Law Codification Committee, which started discussing the codification of Are'Are customary land law in 2000. In 2003, the Committee organised a workshop with chiefs from Are'Are to discuss the proposed

⁷⁶ Part IV, section 2(d), Townsville Peace Agreement 2000.

Are'Are Customary Land Ordinance draft.⁷⁷ The rationale for this was to get the chiefs to agree on the draft ordinance before it was submitted to the Malaita Province Assembly, to be passed as the Are'Are Customary Land Ordinance.⁷⁸ However, due to a lack of political will, the Malaitan Province Assembly did not pass this draft Ordinance.

The discussion for acquiring land in Auluta Basin for oil palm development started in 2002. A taskforce appointed by the Ministry of Agriculture and Livestock explored options to access the land. It submitted a report in 2002 to the Solomon Islands government, recommending registration of customary land in the Auluta Basin for oil palm development. Agents of the state opted for land recording. While land recording constitutes formalisation and invariably changes customary arrangements, actors like Nori saw it as preserving customary ownership and making it more certain. Such a conceptual perspective resonates with the view of individuals such as Helen Hughes that customary land tenure arrangements are intrinsically unsuitable for development. Customary land was regarded, under this view, as vulnerable to disputes due to uncertainties over ownership and boundaries.

Government agents largely internalised this perspective in reaching their decision to consider trialing the recording of customary land based on the Customary Land Records Act. In 2007, with funding assistance from SIISLAP, the Ministry of Lands undertook a land recording pilot as the first step towards registration and titling to make the land accessible for

⁷⁷ The Are'Are Customary Land Ordinance draft was a modified version of the draft Are'Are Land Code 1989.

⁷⁸ Provincial Assemblies have the legislative power to enact ordinances dealing with 'Codification and amendment of existing customary law about land. Registration of customary rights in respect of land including customary fishing rights': Schedule 3, section 6 of the Provincial Government Act 1997 (No. 7 of 1997).

development.⁷⁹ This was made possible after the government enacted The Customary Land Records Regulation, gazetting it in May 2007. The motivation for passing this subsidiary legislation was to enable the Auluta land recording pilot project to proceed. This project was considered a success by agents of the state and SIISLAP key actors because the land recording process was accomplished without any disputes.⁸⁰

Surveying and registration of 6,875 of 10,250 hectares then took place, and titles to the registered land were vested in the Commissioner of Land, and then transferred by the Ministry of Lands to landowners in 2012.⁸¹ The recipients of the registered titles were male landowners from the landowning groups.⁸² There were anecdotal reports that some landowners had already taken timber rights and licenses for most of the land registered and earmarked for oil palm development. While I agree that the Auluta Basin land recording pilot project was a success on paper, the intended national development project for Auluta Basin was never implemented. This demonstrates that the deployment of land recording and registration as part of a land reform program is no guarantee of development unless political support and interest in the process are maintained. Despite the recording and registering of land, the decision to proceed with development in an area is always fundamentally political, and depends on the presence of an investor ready to lease the land.

⁷⁹ For discussion on the land recording process in Auluta, see Cook and Kofana, 'Recording Land Rights and Boundaries in Auluta Basin, Solomon Islands', 51.

⁸⁰ For discussion of the Auluta Basin land recording process at the political level, see National Parliament of Solomon Islands Daily Hansard, Second Meeting – Eight Session, Tuesday 3 October 2006.

⁸¹ Editor. (2012). 'Auluta Basin Sets Standards.' *Solomon Times Online*, 17 October. [Online <http://www.solomontimes.com/news/auluta-basin-sets-standards/7319>](http://www.solomontimes.com/news/auluta-basin-sets-standards/7319).

⁸² Editor, 'Auluta Basin Sets Standards'.

Since 2003, the year in which RAMSI arrived in Solomon Islands and the World Bank's *Land Policies for Growth and Poverty Reduction* report was published, there has been increasing emphasis among donors and regional organisations on land reform as central to economic development. This land reform agenda has been shaped by conceptual frames such as registration and investment, which assume the notion that customary land tenure is problematic for development. By definition, the benefits of legal security for land tenure required the introduction of land reform. In other words, creating laws as part of land reform to promote legal security is believed to facilitate social change. However, legal security does not exist in a vacuum, and the introduction of land reform without factoring in social relationships can never guarantee legal security.

AusAID's *Pacific 2020 Report*, published in 2006, identified land tenure and governance as key impediments to long term economic growth.⁸³ Land reform based on the guiding principle of 'changing land tenure only to the extent necessary' was considered essential to facilitate economic growth and promote social stability. The report specifically promoted the blending of group ownership with long term lease agreements coupled with individual leaseholders. This would include an improved land recording system; a cost effective framework for land dealings; an efficient land dispute process; and improved land administration services.⁸⁴

⁸³ AusAID. (2006). *Pacific 2020: Challenges and Opportunities for Growth*. Canberra, Australian Agency for International Development (AusAID).

⁸⁴ AusAID, *Pacific 2020*, 6.

The land reform proposals in the *Pacific 2020* report reflected the influence of a research paper prepared by Jim Fingleton. Fingleton is a lawyer and anthropologist with exceptionally broad experience working on land issues in Melanesia, Asia, Africa and the Caribbean. This included conducting fieldwork research during the 1970s and 1980s on customary land reform in a number of provinces of PNG. Since then he has returned to PNG on numerous occasions to work on customary land projects. In addition, Fingleton headed the Native Title Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies from 1993-1995. Based on this experience, Fingleton proposed that land reform programs should meet five fundamental development criteria; they should: strengthen land rights; facilitate land dealings; offer mechanisms for land dispute settlement; provide appropriate and adequate land administration services; identify land for public purposes and other special needs.⁸⁵

The *Pacific 2020* report provided the rationale for AusAID's Pacific Land Program initiative, which was established in 2006. The Program was intended to be rolled out across the Pacific region, with the stated aim of providing funding assistance to countries in the Pacific which wanted to strengthen their land systems. The first phase of the program involved a Case Study Project on land issues in the Pacific. Fingleton played a key role in shaping the thinking behind the Case Study Project. Fingleton has revealed that he was requested by AusAID in 2005 to talk with the Australian Foreign Minister, Alexander Downer, about the land issues as part of the Pacific Land Program. According to Fingleton, he persuaded Downer that it was possible to have a half-way house which involved customary ownership at the group

⁸⁵ Fingleton, J. (personal communication, 12 May 2015); see also Fingleton, J. (2006). Background Paper – Pacific 2020: Challenges and Opportunities for Growth. Canberra, AusAID.

level and use rights at the individual level.⁸⁶ The Case Study Project adopted Fingleton's five fundamental development criteria for land reform, and aimed to examine land issues and identify the 'lessons that could be learnt for possible future application'.⁸⁷

Fingleton played a central role in identifying and getting various people to be involved in the Case Study Project. These researchers included Chris Ballard, Daniel Fitzpatrick and his research assistant Rebecca Monson, who drafted much of the content on gender and land in the report; in a further illustration of the power of networks, these three individuals constitute my PhD panel at the ANU. Seventeen case studies were conducted in 2007 as part of the first phase of the Pacific Land Program.⁸⁸ AusAID wanted Fingleton to provide an overarching commentary on what people were writing but he declined to undertake this task. When it became clear that AusAID was not going to use him in producing the *Making Land Work* report (which was co-authored by Fitzpatrick), he pulled together ideas from the Case Study Project and wrote an article entitled *Pacific Land Tenure: New Ideas for Reform*, which reinforced the argument for the protection of customary land rather than its abolition. Here, Fingleton points out that with appropriate adaptation measures, the reform of customary land tenure might succeed in facilitating economic development.

⁸⁶ Fingleton, J. (personal communication, 12 May 2015).

⁸⁷ Fingleton, J. (July 2008). *Pacific Land Tenure: New Ideas for Reform*. Rome, Food and Agriculture Organization of the United Nations: FAO Legal Paper No. 73, 3. Available Online at www.fao.org/legal/prs-ol.

⁸⁸ Fingleton, *Pacific Land Tenure: New Ideas for Reform*.

Fingleton has argued that reform of customary land arrangements should seek a balance between privatisation and registration.⁸⁹ This balance should include ‘a two tier registration system, with group titles as the ‘head title’, and then subsidiary titles (leases etc) granted by groups to the user of the land’.⁹⁰ In contrast, proponents of the outright abolition of customary land systems, such as Helen Hughes, have argued that customary land impedes or deters agricultural development, and that land privatisation offers the only way forward. Fingleton has had a profound influence in shifting the debate away from this emphasis on individualization of land tenure.

The *Making Land Work* report moved to the middle ground in this debate, bringing together different ideas based on sixteen case studies of approaches to land issues across the Pacific. The report sets out a progressive agenda by providing for the recognition of customary institutions and not just the registration of customary land mode, enabling customary law and introduced law to work together harmoniously.⁹¹ Amongst its broad goals were to prioritise ‘tenure security, working with customary tenure, intervene only if necessary and ensure land policies reflect local needs’.⁹² The report stipulated that it did not seek to be a blue print for

⁸⁹ Fingleton, J., (ed). (2005). *Privatising Land in the Pacific: A Defence of Customary Tenures*. Canberra, The Australian Institute; Fingleton, J. (2004). ‘Is Papua New Guinea Viable Without Customary Groups.’ *Pacific Economic Bulletin*, 19(2): 96-103; Fingleton, J. (2007). ‘Rethinking the Need for Land Reform in Papua New Guinea.’ *Pacific Economic Bulletin*, 22(1): 115-121; Anderson, T. and Lee, G. (eds). (2010). *In Defence of Melanesian Customary Land*. Australia, AiD/Watch.

⁹⁰ Fingleton, J. (2005). ‘What a Carve-Up! Customary Land Tenure in the Pacific is a Good Basis for Evolving and Changing Societies, Which is Why the Right Are So Desperate to End It.’ *Arena Magazine*, (78): 16-17, 17.

⁹¹ Farran, S. (2009), “‘Making Land Work’ in the Pacific? Evaluating Land Reform in Vanuatu.’ *Lawasia Journal*, 44: 44-61, 45.

⁹² AusAID. (2008). *Making Land Work, Vol. I*. Canberra, Australian Agency for International Development (AusAID), 105-107.

land reform, ‘nor does it necessarily reflect AusAID or Australian government policy’. It was published largely as a resource.⁹³ Despite this disclaimer, my interpretation of the report is that it remained Eurocentric in construction because it promoted the idea that social and economic development depend primarily on the reform of state-based policies and institutions.⁹⁴ While I agree that the report was an excellent resource, its translation into the shaping of land policy narratives in Solomon Islands has been limited at best, and no clear provision was made to ensure the engagement of national and local actors beyond the report publication and launching phase.

The *Making Land Work* report was an early component of the AusAID Pacific Land Program, for which the Australian Government announced a \$54 million budget initiative in 2008.⁹⁵ It was anticipated to run for four years in addition to existing bilateral programs with countries in Melanesia. The Pacific Land Program aimed to help Pacific Island countries strengthen their land systems through land reform.⁹⁶ In contrast to the Solomon Islands experience, the *Making Land Work* report and the Pacific Land Program appeared to gain more traction in Vanuatu. A broad movement of people and civil society groups in Vanuatu had begun to

⁹³ AusAID. (2008). *Making Land Work*, Vol. I, vii.

⁹⁴ Farran makes a similar observation in “‘Making Land Work’ in the Pacific?”

⁹⁵ SPC AusAID Pacific Regional Land Initiative Concept. (2008). ‘Draft Aide Memoire: Pacific Land Initiative’. Document available on SPC Land Resource Division website: http://lrd.spc.int/lrd-publications/cat_view/137-all/136-pafpnet/288-sustainable-land-management?limit=5&order=name&dir=DESC (Accessed 16/12/2016).

⁹⁶ Yala, C. (2011). ‘A Political Economy Analysis of the Customary Land Tenure Reforms in Papua New Guinea.’ In Duncan, R. (ed), *The Political Economy of Economic Reform in the Pacific*. Philippines, Asian Development Bank: 33-62; see also Nari, R., Simo, J., Naupa, A., Ganileo, W., Kelly, D. S., Larden, D., Lyons, K., Lynch, A., Webb, S. (Feb 2009). Vanuatu Land Reform Program: Program Design Document. Port Vila (Vanuatu), AusAID Vanuatu Land Program. Available online: <<https://dfat.gov.au/about-us/publications/Documents/vanuatu-land-program-design-document.pdf>>.

show support for land reform (though in ways not necessarily imagined by AusAID), and a land summit was held in Port Vila in 2006 that brought together various stakeholders including landowners and representatives from various communities. A set of resolutions generated by the summit provided the basis for Vanuatu's *Mama Graon* Land Program, in support a range of land reform-related activities.

The *Mama Graon* program was further refined in June 2013 and formed the basis for the land law reform work of the Minister of Lands, Hon Ralph Regenvanu. This work led to constitutional change, amendments to the Land Leases Act and Land Reform Act, and the passing of a Custom Land Management Act.⁹⁷ Siobhan McDonnell, as the principal drafter of these legal amendments, promoted a positive picture of the land law reform through the media and academic conferences.⁹⁸ She had worked for five years in the Northern Territory of Australia for the Central Land Council, a major Aboriginal organization. Later she enrolled at the ANU to do a PhD on land issues in Vanuatu, moving to Vanuatu in 2010 to work as an Australian volunteer around the Chief Roi Mata's Domain World Heritage in North Efate where a massive land grab was under way. She was then based in the Vanuatu Culture Centre as a legal advisor, running legal clinics at North Efate, and in 2013 she was involved in reviewing the existing customary land tribunal which was then closed down.

⁹⁷ Asian Development Bank. (2015). *Engagement in Fragile and Conflict Affected Situations: Understanding the Political Economy of Vanuatu*. Manila, ADB, 3. Online <<https://www.adb.org/sites/default/files/publication/175177/political-economy-vanuatu.pdf>> (Accessed 4/12/2016).

⁹⁸ McDonnell, S. (2015). 'Vanuatu Embraces Landmark Reforms.' *East Asia Forum*, 14 March. Online <<http://www.eastasiaforum.org/2015/03/14/vanuatu-embraces-landmark-reforms/>> (Accessed 20/11/2016); McDonnell, S. (2014). 'Better Protection for Custom Owners: Key Changes in Vanuatu's New Land Legislation.' *Outrigger: Blog of Pacific Institute*, 4 March. Online <<http://pacificinstitute.anu.edu.au/outrigger/2014/03/04/better-protection-for-custom-owners-key-changes-in-vanuatus-new-land-legislation/>> (Accessed 20/1/2016).

Through these different roles McDonnell got to know Regenvanu who was mobilising political support around the issue of land and justice. When Regenvanu became Minister of Lands, he engaged McDonnell as a land law consultant, and she became the principal drafter of Vanuatu's land law reform package. McDonnell's work experience in the Northern Territory of Australia and research on Vanuatu land issues contributed to shaping the conceptual frame for her drafting of the Vanuatu land law reform package. The vision by Regenvanu and drafting of the legal amendments by McDonnell were well intentioned. However, there is no guarantee that the vision of one politician and the ideas of one lawyer in terms of land law reform will translate into workable law. The reforms introduced a highly bureaucratic process, in the context of questions over the capacity of implementing agencies, and a volatile political environment in Vanuatu.⁹⁹

The principles and approaches developed by donors such as the World Bank were also promoted at the regional level, by the Pacific Islands Forum Secretariat with the support of AusAID, and were captured in the 2008 report *Land Management and Conflict Minimisation: Guiding Principles and Implementation Framework*. This framework was aimed at providing guidance to Pacific Islands Forum countries in addressing issues of land management and land conflicts.¹⁰⁰ There were twelve guiding principles, of which the first stated that 'customary land policy reforms should respect and protect customary ownership and

⁹⁹ Recent analysis of the land law reform see: Farran, S. and Corrin, J. (2016). 'Developing Legislation to Formalise Customary Land Management: Legal Pluralism or a Shallow Veneer.' *Law Development Review*, 1-27.

¹⁰⁰ Pacific Islands Forum Secretariat. (2017). *Land Management and Conflict Minimisation*. Online <<http://www.forumsec.org/pages.cfm/political-governance-security/conflict-prevention/land-management-conflict-minimisation.html?printerfriendly=true>> (Accessed 7/02/2017).

individual use rights as defined by social relations and customary laws'.¹⁰¹ The implementation framework consisted of six steps that Pacific Island countries could adopt to drive their own land reform processes.¹⁰² These guiding principles provided clear guidelines on good process in land reform, but translating these principles into practical land reform at the national and local level remains a challenge. Few policy makers and key actors have internalised these principles to the extent of someone like Andrew Nori.

7.4 Land Consultant

Following the Solomon Islands national elections in 2006, the Grand Coalition for Change Government (GCCG) under the leadership of Manasseh Sogavare flagged land reform as one of its major programs in order 'to make customary land a bankable or transferrable commodity' for development.¹⁰³ The government's first step was to establish a land reform unit within the Ministry of Lands, Housing and Survey, tasked with implementing its land reform program. However, the GCCG got no further with its land reform program because

¹⁰¹ Pacific Islands Forum Secretariat (2008). Thirty-ninth Pacific Islands Forum Communiqué. Alofi, Niue, 19-20 August 2008, 16. Online
<<http://www.piangoo.org/News/Member/2008/Final%20Communique%20of%20the%2039th%20%20Pacific%20Leaders.pdf>> (Accessed 18/1/2016).

¹⁰² The six steps are as follows: 'Step 1: Obtain political commitment for a customary land reform process; Step 2: Adopt a stakeholder-based approach and hold nation-wide discussions on land related matters, to define the land reform agenda. This could be facilitated by a nationally respected champion (s), who could be politicians, community leaders or public officials; Step 3: Once a common understanding has been achieved, stakeholders together identify a national vision and national land policy framework for customary land reforms, which articulates expected outcomes and key guiding principles to underpin the reforms; Step 4: Obtain government endorsement of the national land policy framework with clear land reform outcomes linked into national development goals; Step 5: Government and key stakeholders decide on strategies to address the national land reform agenda focusing on the key outcomes desired, reflecting national land policy goals; Step 6: Obtain development partner support for priority outcomes-focused programs of initiatives': see Pacific Islands Forum Secretariat, Thirty-ninth Pacific Islands Forum Communiqué.

¹⁰³ The Grand Coalition for Change Government. (May 2006). Policy Framework Document. Honiara, Prime Minister's Office, 18.

Sogavare was removed as Prime Minister in a no confidence motion on the floor of Parliament in December 2007. The Coalition for National Unity and Rural Advancement (CNURA), with Derek Sikua as Prime Minister, took over from Sogavare's government. In its policy statement, the CNURA government stated that it would 'continue on with land reform and explore options that would allow landowners to use land as an asset for investment and economic growth'.¹⁰⁴ This policy statement provided the basis for the government to pursue the piloting of customary land recording in Auluta Basin.

The National Coalition for Reform and Advancement (NCRA) government was formed under the leadership of Danny Phillip after the national elections in 2010. He resigned as Prime Minister in November 2011 and was replaced by Gordon Darcy Lilo. NCRA continued to pursue reform in customary land tenure to allow easy access to land to host national projects. The reform would be enacted through a new piece of legislation referred to as the Solomon Islands Customary Land Institutionalisation Bill. The government envisaged that this proposed new land law would 'enable customary land holding groups to register their customary lands for the purpose of rendering them to be more inclusive to enhance socio-economic development'.¹⁰⁵

This reform would also include the codification of customary land law. These policy statements indicated that while the government wanted to reform customary land it was also careful to protect customary landowners by encouraging group registration. And yet the

¹⁰⁴ Coalition for National Unit and Rural Advancement (CNURA). (January 2008). *Policy Statements*. Honiara, Prime Minister's Office, 27.

¹⁰⁵ National Coalition for Reform and Advancement (NCRA). (2010). *Policy Statement*. Honiara, Prime Minister's Office, 13.

government continued to promote the idea of codification of custom. The assumption that codification creates certainty and that benefits necessarily flow from certainty has endured as an influential conceptual view among policy actors, despite the absence of any empirical evidence to substantiate it.

After issuing this policy statement on reform of customary land, the NCRA government abolished the land reform unit in the Ministry of Lands, Housing and Survey, setting up an entirely new land reform unit within the Office of the Prime Minister. Andrew Nori, who had left politics in 1998 and then worked as a private entrepreneur and practitioner, was appointed in February 2011 as a land consultant to head the new land reform unit. Nori and Phillip knew each other because they had been MPs together in Parliament from 1984-1994. The terms of reference for Nori's contract were as follows:

- (a) develop a national policy for the rationalisation and reform of customary land administration and management; (b) Advise the government on appropriate institutional structures required for effective implementation of the new land management and administration police; (c) Develop framework for the setting up of a national registry for recording of customary land within the department of land; (d) Develop a system of codification of customary land laws in selected regions in Solomon Islands; (e) Develop a new framework for a an effective dispute resolution regime in respect of customary land and related issues; (f) Advise and assist the government in seeking financial and technical expertise assistance to advance and enhance management and administration program; (g) Carry out nationwide awareness programmes on the proposed land management administrative initiatives, including consultation with chiefs, community leaders, provincial government leaders and other stake-holders with the view of securing community support for the programme throughout Solomon Islands; (h) In consultation with relevant stakeholders, develop a legal framework for the management and development of tribal land units; (i) Develop relevant legislative framework for the implementation of the new land reform program.¹⁰⁶

¹⁰⁶ Schedule, Renewed Consultancy Contract, 7 May 2011. Honiara, Office of the Prime Minister.

This was an ambitious scope of work, which depended heavily on Nori. Although Nori had the experience and legal training to carry out the terms of reference, effective land reform is never straightforward and easy. Customary land tenure in Melanesia is particularly complex and the work of one man could never do justice to such complexity.

Upon his appointment, Nori submitted to the Prime Minister a *Policy Framework for Reform, Management and Administration of Customary Land in Solomon Islands*.¹⁰⁷ This document was adopted by the government as the basis of its reform exercise during its term in office. The emphasis in Nori's influence on government policy reflected his conceptual position of recording and registering customary land so as to provide the foundation for economic development. The government's policy aim was to add to the existing area of registered or recorded land which would then form the foundation for economic development.¹⁰⁸ Successive independent governments thus approached land reform under the persistent influence of the idea of secured property rights as the critical basis for development.

Nori's policy framework identified three broad approaches to land reform: (i) land recording; (ii) codifying customary land laws to make them transparent and accessible; (iii) setting up dispute resolution systems.¹⁰⁹ It was Nori who drafted the Customary Land Records (Amendment) Bill 2011 to align with these reform approaches; the bill was approved by

¹⁰⁷ Office of the Prime Minister, Monthly Report May 2011 (Ref: CLRU/Report/2011).

¹⁰⁸ National Coalition for Reform and Advancement (NCRA). (April 2011). Government, Policy Framework for Reform, Management and Administration of Customary Land Tenure in Solomon Islands. Honiara, Office of the Prime Minister, 7.

¹⁰⁹ NCRA, Government, Policy Framework for Reform, Management and Administration of Customary Land Tenure in Solomon Islands.

Cabinet.¹¹⁰ Nori insisted that before any land dispute mechanism was introduced there should be customary land recording and codification. His position was that the proposed Tribal Land Dispute Resolution Panels Bill should not be passed unless there was land recording and codification of custom. This Bill was drafted under the guidance of Pamela Wilde, a legal consultant and policy adviser who had previously worked in the New South Wales Attorney General's Department. The Solomon Islands bill followed very closely the Vanuatu Land Tribunal, which was repealed in 2013.

Nori, who was now head of the Customary Land Policy Management Unit located within the Office of the Prime Minister and Cabinet, wrote a letter to the Permanent Secretary of the Ministry of Justice and Legal Affairs strongly objecting to section 10 of the Tribal Lands Dispute Resolution Panels Bill.¹¹¹ This section deals with the selection of persons to the register of panel members. He argued that the draft was not clear as to who should do the nomination, what credentials were required of members, and on what basis their knowledge of customary rules should be assessed. Nori further argued that the critical element in the panel arrangement, that panel members should possess a 'good knowledge of customary rules applying to land in their area or custodians of land',¹¹² was too broad a requirement.

He asserted that the rules of customary law were complex and multi-dimensional, and that in his years of dealing with custom chiefs and custom experts he had not come across one person

¹¹⁰ The Customary Land Records (Amendment) Bill 2011 was only in draft form.

¹¹¹ Andrew Nori to Permanent Secretary, Ministry of Justice and Legal Affairs, 9 November 2012 (REF: CLR/LEG.01/011).

¹¹² Section 10(a) of the Tribal Lands Dispute Resolutions Panels Bill stipulates that: 'A person is eligible for appointment to the Membership Register if they lodge a nomination application in the prescribed form and they – (a) have a good knowledge of customary rules applying to land in their area or are custodians of land'.

who could meet these criteria. Nori stressed that evidence of this fact could be seen in how decisions of local and customary land appeal courts were made: some 90% of these cases were devoid of any reference to customary land tenure principles. They focussed instead on issues of genealogy, shrines, burial places and stone walls, raising a complex issue about questions of law and questions of fact. As Nori suggested (and I concur) these evidential matters form a minute part of claims to landownership, land rights and land use.

Based on these arguments, Nori advised against the draft Bill being passed by Parliament because in its current form it would provoke the same frustrations faced in relation to the competence or otherwise of local and customary appeal courts in dealing with customary land disputes.¹¹³ Nori's arguments were also shaped by his conviction that customary law should be codified and there should be alternative legislative and administrative systems for the management of customary land issues. Nori's advice against the Bill seemed to have convinced thinking at the political level. However, his advice not to pass the Bill was based on his opinion that codification of custom should happen first, a reasonable objection as the Bill in its then form had some weaknesses that required review.

Nori managed to fulfil only a portion of his terms of reference before he passed away in June 2013.¹¹⁴ His successor, Genesis Kofana, had been Director of the Land Research and Policy Unit in the Ministry of Lands, Housing and Survey, a position he assumed in 2008 after graduating in Development Studies from the University of the South Pacific. Kofana co-authored a chapter in the *Making Land Work* report, which was a description of the land

¹¹³ Andrew Nori to Permanent Secretary, Ministry of Justice and Legal Affairs, 9 November 2012 (REF: CLR/LEG.01/011).

¹¹⁴ Theonomi, B. (2013). 'Nation Mourns Loss of Great Leader.' *Solomon Star*, 10 July, 3.

recording process piloted in Auluta Basin rather than a critical analysis of this process. He later moved to the Prime Minister's Office where he worked closely with Nori and became convinced that land recording based on the Auluta Basin model was the way to go.

Kofana took on the role as land consultant under the Democratic Coalition for Change Government (DCCG), led by Sogavare since December 2014. The DCC Government in its land policy statement declared its intention to 'restrengthen and support land reform programs to encourage economic development in customary lands throughout Solomon Islands'. This policy statement was no different to past government policy statements that emphasised improving or strengthening land systems through reform as the prerequisite for economic development on customary land. Customary land recording was envisaged by each successive government as a necessary step towards land reform.

Based on the DCCG policy statement, international agencies have continued to provide technical programs to assist the DCC government in its pursuit of land reform. Since 2014, the Secretariat of the Pacific Community has managed funding from the Australian Government for a Program of Technical Assistance to the Ministry of Lands, House and Survey.¹¹⁵ The ADB under its 'Support Governance through Safeguards Project' contracted international legal consultants to draft a number of land laws in 2015, which is essentially land law reform. These draft land laws are yet to be passed by Parliament.¹¹⁶

¹¹⁵ Under this Program, funding was provided for the conducting of research on land acquisition process as provided for under Part V of the Land and Titles Act. For the research findings see: Tagini, P., Radford, J. and Roughan, P. (May 2016). Customary Land Acquisition Report. Honiara, Ministry of Lands, Housing and Survey and Secretariat of the Pacific Commission.

¹¹⁶ Land laws drafted in 2015: Draft Customary Land Records Regulations 2015, Draft Land and Titles (Amendment) Bills 2015; Draft Land Acquisition and Resettlement Reports Regulations 2015, and Draft Amendments to the Environment Regulations 2008.

7.5 My Own Role

I had known Nori for many years, because he was in politics during the same period as my father. Nori and I were also students at Victoria University of Wellington (VUW) in 2002, along with Solomon Islands Former Chief Justice, Sir John Muria from Guadalcanal. We were all pursuing a masters in law degree. It was neutral ground for us to reflect on the law and order situation in Solomon Islands during that period. Since then I maintained contact with both Nori (until his death) and Muria. From time to time when I was in Honiara, I would catch up with Nori for ‘tok stori’ on issues from land to law to politics. In 2011, when Nori took up the task as land consultant for the Solomon Islands government, he shared his thoughts with me how he was going to approach the work.

Nori knew I was doing research on land reform and he was willing to be interviewed. Unfortunately, he passed away in 2013, before I had a chance to formally interview him. When I returned to Honiara in 2014 to do my fieldwork, I felt it important to examine his work in order to understand his role as an actor. I tried tracking Nori’s work in the Prime Minister’s Office but the response I got then was that ‘Everything was inside Nori’s head’. However, in 2015 when I returned to Honiara on an ANU land reform project I met Nori’s wife Delma in the corridors at the Prime Minister’s Office. I greeted her and we had a conversation about Nori. It was at that time that she mentioned she was returning Nori’s papers to Kofana.

I have known Kofana for almost twenty years because his mother’s brother was married to my aunt. I approached Kofana for approval to access Nori’s papers. He gave me permission

to do so, including photocopying the papers. My access to Nori's papers was made possible through a network of association. Had it not been for this connection with Kofana it would have been impossible to reconstruct the documentary trail of Nori's work. Both Nori and Kofana worked in the reform land space over a long period, and they had inside knowledge and connection with various national and local actors. Through them, I was exposed to their networks and made connection with others also involved in land reform.

When I was engaged as a researcher on the ANU State Society and Governance in Melanesia Land Reform Project I used my own national and local networks to build further connections. I became involved in this project as a Solomon Islander doing a PhD at ANU. I had chosen the ANU because of its reputation and its huge collection of Pacific materials. I had been introduced to these materials when I first visited ANU in 2008 under the SSGM Visitorship program, and was aware of a number of scholars at ANU who had conducted research on land issues in the Pacific. My position as an ANU PhD candidate provided another form of privilege, making it possible for me to access resources and network with scholars, including other PhD candidates at the ANU who were working on similar land-related projects in the Pacific. These connections opened opportunities for me.

One of these opportunities was the Land Reform Project 2015, an Australian government-funded initiative managed by the ANU State Society and Governance in Melanesia (SSGM). The project was developed by Dave Peebles who had worked in Solomon Islands for a number of years, including as Australian Deputy High Commissioner, and had become increasingly aware of the importance of land issues. Peebles approached SSGM because of its outstanding research reputation in Melanesia. Julien Barbara, a staff member of SSGM

was the point of contact. According to McDonnell, Peebles knew Barbara, who had worked in various roles with the Department of Foreign Affairs and Trade (DFAT) and AusAID. Barbara had moved to the Solomon Islands to manage the Machinery of Government Program under RAMSI from 2010-2012.¹¹⁷ Through these professional networks, SSGM was selected to undertake the land reform project.

The lead consultant for this project was Siobhan McDonnell, based on her previous experience as a land lawyer and consultant in the Northern Territory of Australia and in Vanuatu (see above). McDonnell had given a seminar on the land reform process in Vanuatu to DFAT in Canberra. The Australian High Commission Office in Solomon Islands had also been listening in to the seminar and they were particularly interested in the Vanuatu experience.¹¹⁸ According to McDonnell, at inception the scope of the project was very fluid, so she drafted the initial terms of reference, acknowledging the high sensitivity around land issues in Solomon Islands, and the reluctance of Australia to be seen as pushing any particular agenda.¹¹⁹ With no prior experience in Solomon Islands, McDonnell sought me out as a project member, keenly aware of the importance in modern Melanesian society of local networks; we had known each other in Vanuatu since 2010.¹²⁰ I agreed to be involved in this project because it related directly to my own PhD research, and addressed a challenge of national importance.

¹¹⁷ Barbara, J. (March 2016). Profile. ANU SSGM. Online < <http://ssgm.bellschool.anu.edu.au/experts-publications/experts/julien-barbara> > (Accessed 17/11/2016).

¹¹⁸ Siobhan McDonnell (personal communication, 21 Dec 2016).

¹¹⁹ Siobhan McDonnell (personal communication, 21 Dec 2016).

¹²⁰ Siobhan McDonnell (personal communication, 21 Dec 2016).

The land reform work involved in-country consultation with stakeholders including the Solomon Islands Government, as well as provision of input to the first land reform draft report. I later became more involved by leading further in-country consultations to discuss the draft report with various stakeholders. This included creating and maintaining relationships with a broad network of stakeholders, including actors inside the Solomon Islands Prime Minister's Office, Ministry of Lands, ANU's SSGM and DFAT's Solomon Islands Office. I worked collaboratively with these different groups of actors to review the report, finalise the land reform conference program and plan the technical workshop. Moving between these different stakeholders required me to switch frames, from an academic and professional legal frame with ANU SSGM and DFAT, to a mixture of professional, political and local frames with Solomon Islands government stakeholders.

The 2015 land reform conference in Honiara at which the SSGM project report was launched was similar, in several respects, to the 1978 land conference organised by Ian Heath and Peter Larmour (see chapter 6). Like the 1978 conference, the 2015 conference provided a space for a network of national and regional actors to share their experiences and lessons on land issues. Regional participants included the Minister of Lands, Ralph Regenvanu, and Alicita Vuki, Head of the Customary Land Management Office, from Vanuatu. During the conference the report, authored by Siobhan McDonnell with contributions from Alice Pollard and myself, and entitled *Building a Pathway for Successful Land Reform in Solomon Islands*, was launched.

The report is a further contribution to the development of land reform ideas advanced in previous reports such as *Making Land Work* and *Land Management and Conflict Minimisation*. It outlines ten steps on the pathway for land reform, including:

broad based consultation on directions for land reform and on models for identifying customary landowners, public debate on key land issues, consultation on new legal arrangements on customary land and funding support for implementation, passing of legal arrangement by parliament and piloting it, and amending new legal amendments based on pilot reviews.¹²¹

The report focused on regional land reform experiences, with an obvious emphasis on McDonnell's experience in Vanuatu. In many respects, the steps drew on broader discussions around principles for good governance and successful land reform promoted by UN FAO, World Bank, AusAID and the Pacific Islands Forum Secretariat. However, applying these principles to local conditions in the Solomon Islands remains a challenge, because there is perhaps an inadequate alignment of the principles with the conceptual frames of national and local actors. Principles such as these are rarely referred to by government and policy actors in discussion on land reform in Solomon Islands.

After the conference, a technical land workshop was organised by the Prime Minister's Office and I was involved as one of the facilitators. A set of resolutions emerging from the technical land workshop emphasised that land reform should follow a process that includes consultation, one of the key steps for land reform identified in the *Building a Pathway for Successful Land Reform in Solomon Islands*. Consultation is a buzz word that many Solomon Islanders are familiar with because it has been associated with development projects. People's experience of 'consultation' is often negative because the way in which it is carried

¹²¹ McDonnell, S. (2015). *Building a Pathway for Successful Land Reform in Solomon Islands*. Canberra, ANU SSGM, 27.

out is frequently selective and perfunctory. Nevertheless, the Ministry of Lands, Housing and Survey, in collaboration with the Prime Minister's Office, agreed to act on the resolutions, which provided action points for the government in addressing land reform.

Following the 2015 land reform conference and technical land workshop, the Ministry of Lands, Housing and Survey engaged Willie Hiuare, a Solomon Islander who has close relations with the then Minister for Lands, Andrew Manepora'a, as a land consultant. Hiuare, who comes from Are'Are, Nori's area of origin, has a law degree from the University of the South Pacific and is a private legal practitioner residing in Fiji. His role as a legal land consultant was to implement the government's land reform policy. He drafted a Cabinet Paper in December 2015, proposing a land reform program that focused on institutional change to customary landholding arrangements, closely resembling the Fiji Lands Commission, land trust board and leasing arrangement model. This program was to begin with consultation on a proposed legislation that he drafted to establish a 'customary land commission and trust board' associated with registration of ownership, 'and availing registering customary land for investment and development purposes'.¹²²

Hiuare proposed that his law firm would play the key role in piloting this proposed new land law. The Fijian model which Hiuare was attempting to introduce was problematic, because Fiji and Solomon Islands have very different cultural and historical contexts, and highly distinct debates around questions such as indigeneity. Hiuare's proposals for land reform showed little evidence of serious thought on how such a model might translate into a Solomon

¹²² Memorandum by the Ministry of Lands, Housing and Survey (22 December 2015). 'Proposal for Customary Land Reform Program'. CAB [2015] 174.

Islands setting. A Cabinet reshuffle saw the replacement of Manepora'a by Moses Garu, and Hiuaire's role as a legal consultant with the Ministry was terminated. However, there was still political support for the Fiji model because it was consistent with the current government's conceptual position on customary land recording as a reform approach to development. One of the immediate steps the government has taken was relocating the Land Reform Unit established within the Prime Minister's Office to the Ministry of Lands. The Unit would be working with customary landowners to record and register their customary land.¹²³

7.6 Conclusion

This chapter has addressed the most recent phase in the long history of attempts at land reform in Solomon Islands, foregrounding the roles of key actors, who have continued in the post-Independence period to exert particular influence on the direction of land reform debate and initiatives. Changes in global discourse, dominated by the good governance and rule of law discourse, have been reflected in shifts in regional and national conversations around land, with international best practice principles increasingly integrated within local land reform principles (if not practices). While principles such as consultation now feature in national programs, land reform in Solomon Islands, as elsewhere in Melanesia, continues to be characterised by neo-liberal perspectives on the nexus between customary land and economic development.

However, as Solomon Islanders now assume the central role in discussions around national land reform, it also continues to be important to pay attention to the role of actors and their

¹²³ Government Communication Unit Press. (2016). 'Government Strengthens Land Reform Unit With New Home.' *Solomon Today Post*, March 15. Online < <https://solomontodaypost.wordpress.com/2016/03/15/govt-strengthens-land-reform-unit-with-new-home/>> (Accessed 12/12/2016).

individual networks. I demonstrate this point by tracing the linkages between various actors and their involvement in the land reform space. Andrew Nori adopted a series of roles, as a politician, legal practitioner, logging broker and land consultant. Nori's particular focus was on the codification and recording of customary land. As a Solomon Islander actor with political leverage based on his reputation, connections and networks, he was able to impose this perspective on the national land reform agenda.

Nori's dominance placed limits on the coordination of national land reform approaches with international and regional debates. Other actors such as Jim Fingleton, Siobhan McDonnell and Willy Hiware brought their backgrounds and networks to bear, advocating solutions for Solomon Islands that strongly resembled their formative experiences in PNG, Vanuatu and Fiji. Finally, positioning myself as an actor with this frame requires me to be highly conscious of the influence of my own background, my networks and conceptual perspectives.

CHAPTER 8: Conclusion

Why does land reform continue to be a challenge in Solomon Islands and, by implication, elsewhere in Melanesia? And why do successive land reform programs, often closely resembling each other, continue to fail? What lessons might we learn from this long history of failure? For many Solomon Islanders, land reform refers to the transformation of customary landholding relationships through policy and legal reform. For others, land reform implies land redistribution, involving the conscious redistribution of land to address historical land alienation and the exclusion of customary landowners.

The distinction between these two contrasting and conflicting public understandings of land reform in Solomon Islands is seldom clarified in policy documents or media press releases. Many people in Solomon Islands equate land reform with the practical actions of land adjudication, recording and registration; but these efforts to adjudicate, record and register land are underpinned by the belief that these actions will facilitate development. Land recording and registration continue to be perceived as a panacea for poverty. Yet this approach is deeply problematic, because there is no empirical evidence to substantiate such a belief.¹

¹ Frank Place for example, discusses experiences in Sub-Saharan Africa where land registration programs failed to achieve their envisaged goals: Place, F. (2009). 'Land Tenure and Agricultural Productivity in Africa: A Comparative Analysis of the Economics Literature and Recent Policy Strategies and Reforms.' *World Development*, 37(8): 1326-1336; and Kingwill et al. highlight that high levels of poverty and inequality persist despite government policies to formalise property rights in South Africa: Kingwill, R., Cousins, B., et al. (2006). *Mysteries and Myths: De Soto, Property and Poverty in South Africa*. London, International Institute for Environment and Development.

Across Melanesia, land reform programs have placed particular emphasis on ‘unlocking the economic potential’ of land held under customary tenure. The assumption is that customary tenure constrains development potential and that there is a need to find an appropriate mechanism with which to open land up for access, most often through the formalisation of tenure. Land reform has been shaped by the conceptual perspective that changes to the law will necessarily lead to a change in the relationship of landholding arrangements, facilitating development. It seems evident, from the Solomon Islands experience, that the acts of land recording and registration in themselves are no guarantee of development.

Much of the current literature stresses that land registration is a ‘precondition for agricultural development’ because it ‘creates secure tenure and helps resolve disputes’.² As Dirk Loer points out, much of the theoretical basis for justifying such an argument is ‘based on a privatization approach’,³ shaped by property rights. The formalisation of land tenure was popularised by Hernando de Soto at the end of the twentieth century. According to de Soto, many poor people living in informal settlements and rural areas do own property such as land. However, their rights are neither documented nor formalised, thus their property cannot be transformed into capital or used as collateral for a loan – this is described as ‘dead capital’.⁴ This view has a long historical trajectory that can be traced back to the colonial era and the nineteenth century, and which continues to shape the debate on the suitability of customary

² Sikor, T. (2006). ‘Politics of Rural Land Registration in Post-Socialist Societies: Contested Titling in Villages of Northwest Vietnam.’ *Land Use Policy*, 23(4): 617-628, 617; see also Dirk Loehr who points out that the argument for land registration is about formalisation rather than capitalisation: Loehr, D. (2012). ‘Capitalization by Formalization? – Challenging the Current Paradigm of Land Reforms.’ *Land Use Policy*, 29(4): 837-845.

³ Loehr, ‘Capitalization by Formalization?’

⁴ De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York, Basic Books.

land tenure for development and economic growth in Solomon Islands and elsewhere in Melanesia.

Helen Hughes has argued that customary land deters agricultural development in the Pacific, and that the introduction of private property rights offers a way forward.⁵ But objections to her argument, mounted by experts such as Jim Fingleton, assert that customary land can be compatible with economic development.⁶ Fingleton proposes ‘a two tier registration system, with group titles as the ‘head title’, and then subsidiary titles (leases etc) granted by groups to the user of the land’.⁷ More recently, donor-commissioned research reports have acknowledged the relevance of customary land for development and its importance as a social safety net, but with registration as a necessary prerequisite.⁸

As a result, recent proponents of land reform have pushed for registration in order to make customary land available for economic development. But experience in Solomon Islands and elsewhere shows that land registration does not just ‘unlock’ or ‘open up’ land to development; rather, it converts land into spatialised titled registered freehold or perpetual

⁵ Hughes, H. (2003). ‘Aid Has Failed the Pacific.’ *Issues Analysis No 33*. Sydney, Centre for Independent Studies; Hughes, H. (2004). ‘The Pacific is Viable!’ *Issues Analysis No 53*. Sydney, Centre for Independent Studies; for a response to Jim Fingleton’s argument see Gosarevski, S., Hughes, H. and Windybank, S. (2004). ‘Is Papua New Guinea viable with customary land ownership?’ *Pacific Economic Bulletin*, 19(3): 133-36.

⁶ For arguments in support of customary land, see Fingleton, J. (ed). (2005). *Privatising Land in the Pacific: A Defence of Customary Tenures*. Canberra, The Australian Institute; see also Fingleton, J. (2007). ‘Rethinking the Need for Land Reform in Papua New Guinea.’ *Pacific Economic Bulletin*, 22(1): 115-121; Anderson, T. and Lee, G. (eds). (2010). *In Defence of Melanesian Customary Land*. Australia, Aid/Watch.

⁷ Fingleton, J. (2005). ‘What a Carve-Up! Customary Land Tenure in the Pacific is a Good Basis for Evolving and Changing Societies, Which is Why the Right Are So Desperate to End It.’ *Arena Magazine*, 78: 16-17, 17.

⁸ AusAID. (2006). *Pacific 2020: Challenges and Opportunities for Growth*. Canberra, Australian Agency for International Development (AusAID); see also AusAID. (2008). *Making Land Work, Vol. 1 & 2*. Canberra, Australian Agency for International Development (AusAID).

estates instead of improving the functionality of existing customary tenure arrangements. Such a trend is hardly surprising given that land policy in Solomon Islands, since its establishment as a protectorate in 1893, has been associated with notions of the necessary transformation of customary land to property as part of state formation (discussed in Chapter 3). Changes to landholding arrangements from a customary land tenure system, which puts emphasis on functionality, to a state-based property rights system that is spatial have been seen as central to this transformation.⁹ This trend of transitioning customary land tenure to a formal property rights systems has been shaped by the imposition of Western ideas of capitalist development transmitted by particular actors and their nodes of network through their roles as administrators, commissioners and consultants.

Land reform in Solomon Islands has been driven by a series of key actors, all of whom have shared an emphasis on transforming customary land to registered proprietary interests for economic development, a theme that runs throughout the historical scope of this thesis. As explained in Chapter 1, land reform has been a persistent challenge for more than a century, and has been driven by different individual and institutional actors. A necessary starting point for this thesis was the identification of theoretical models for the roles of actors and networks from which I could draw in examining their role in land reform processes.

Actor Network Theory or ANT, as developed by Bruno Latour and his colleagues, is a useful frame for the purposes of my thesis, but the potential of ANT for the analysis of land reform has not be widely recognised or explored. Existing analysis of land reform in the South Pacific tend to focus instead on processes and policy rather than the roles of individuals or

⁹ Banner, S. (2002). 'Transitions between Property Regimes.' *The Journal of Legal Studies*, 31(S2): S359-S371.

social networks. Chapter 2 provides a detailed discussion of ANT and its linkage to concepts such as frontier, depopulation and violence. This included identifying the key characteristic features of ANT such as the scope for both human and non-human actants; this broad scope allows for an analysis of land reform that is focused not only on individuals but also on institutions and legal apparatus, enabling an appreciation of the ways in which land reform ideas travel and are transmitted by particular actors and their networks.

Accordingly, this thesis addressed the roles played by key actors within the long historical trajectory of land law reform in Solomon Islands as a means of demonstrating that the backgrounds and roles of these individuals have strongly influenced the nature of that trajectory. How actors define and mediate perceptions and ideas, and how they interact with each other and with other stakeholders are significant themes that require study because they contribute to our understanding of the evolution of property rights over time. All the key actors followed in this thesis have been involved in a continual process of networking, with power constantly shifting and being shared between various actors. As in Latour's example of Pasteur's laboratory work, these actors were involved in a number of moves: creating alliances that captured the interests of other stakeholders; drawing on their experiences and knowledge to influence how Solomon Islands land laws were drafted; and committing the necessary time and resources to follow up on their implementation. The value of ANT in this analysis lies in its capacity to highlight the importance of these moves and networks, and the ways in which they enable ideas to travel from one context to another.

Woodford is an obvious example of an actor who stayed in Solomon Islands (from 1896 to 1915) and pursued land reform over an extended period. He was not just a technical expert

but also an individual who was connected through networks and who was able to traverse the field interacting with a diverse constellation of national and local actors to maintain the rule of law, which included regulating the spatial allocation of property rights. Issues such as depopulation and violence that were associated with the notion of waste land strongly informed the ways in which the early colonial land laws were drafted and implemented. The enactment of these property laws contributed to the spatial transformation of customary landholding arrangements which saw Solomon Islanders recreated as trespassers while foreign settlers became landowners. The experience of these changes in landholding arrangements led many Solomon Islanders to challenge the basis of land alienation, forcing a response from the state, which established a Lands Commission, led initially by Gilchrist Gibbs Alexander (1919-1920) and later by Frederick Beaumont Phillips (1920-1924). As shown in Chapter 4, the contrasting manner in which Alexander and Philips separately investigated and settled the land grievances of Solomon Islanders reflected their individual experience and background.

Other than Woodford, most of the key actors involved in land law reform work in Solomon Islands during the colonial period, such as Peter Brett and Ian Ernest Morgan, took a purely technocratic approach, engaging in land law reform but with very limited interaction with national or local actors. The different key actors all appear to have shared the view that customary tenure was ‘a problem’ and a hindrance to economic development, which could be solved only by conversion to state-registered title estates. Such a perception was just one component of a portfolio of ideas that were introduced to Solomon Islands as part of the global flow of ideas during the colonial period.

As discussed in Chapters 5 and 6, many of the key actors who dealt with land issues and reform in Solomon Islands, including Colin Allan, Peter Brett, Frederick Kitto, Graeme Cross, Brian Twomey and Ian Ernest Morgan, were administrators and experts who moved from one colony to another. They were exposed to the global flow of ideas through study overseas and also came to embody that flow through their physical movement between colonial territories and the networks that they were part of. One of the key points made in Chapter 5 is that the empirical value of the ideas propagated by key actors such as Allan, Brett and Kitto scarcely mattered, in the sense that once adopted and promoted by these actors, those ideas – right or wrong – profoundly informed and structured subsequent land policy and reform in Solomon Islands.

Chapter 6 surveys general trends in thinking about land, law and development that were influential in Solomon Islands after World War II, and explained how the careers and travel trajectories of key individuals introduced particular models, such as that of Brunei, to the Solomon Islands. This chapter shows how a small group, connected through networks linked to the Colonial Office and Melbourne University, managed to influence land law reform attempts in Solomon Islands.

Similarly, Chapter 7 shows how actors such as Siobhan McDonnell have been connected through networks linked to the Australian National University and Australia's Department of Foreign Affairs (DFAT) Honiara Office. Local actors such as Andrew Nori played a key role in shaping the narratives and processes on land reform towards the idea of codification of custom and land recording; and my own role as an actor in land reform in Solomon Islands is briefly introduced. Chapter 7 demonstrates how the new rule of law discourse became

linked to land reform in Solomon Islands, as elsewhere in Melanesia. Current approaches to development are dominated by the language of good governance and land law reform has been crucial to this evolutionary process.

Although land reform is often been presented as a purely technical matter, social and professional networks obviously play a critical role in determining the selection of particular technical options. There is already a considerable body of literature documenting the historical trajectory of land reform challenges in Solomon Islands and elsewhere in Melanesia.¹⁰ For more than a century, land reform in Solomon Islands developed around a global circulation of ideas and models which lacked adequate alignment and linkage of purpose and networks between global, regional, national and local actors.

As a way forward, I propose a consultative building process that would facilitate the extension and operation of these networks both vertically and horizontally. This process should begin with conceptual framing of a program that promotes wide sector analysis of the economic output of untitled customary land. This analysis would provide the empirical basis for gauging appropriate reform strategies to make customary land available for other forms of development. I suggest that this is where experienced Solomon Islander and non-Solomon Islander researchers might work collaboratively with young Solomon Islanders to build

¹⁰ Belshaw, C.S. (1950). *Island Administration in the South West Pacific: Government and Reconstruction in New Caledonia, the New Hebrides, and the British Solomon Islands*. London and New York, Royal Institute of International Affairs; Morrell, W.P. (1960). *Britain in the Pacific Islands*. Oxford, Clarendon Press; Allan, C.H. (1957). Customary Land Tenure in the British Solomon Islands Protectorate: Report of the Special Lands Commission. Honiara, Western Pacific High Commission; Coates, A., Britain, G. et al. (1970). *Western Pacific Islands*. London, HM Stationery Office; Monson, R. (2012). *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands*. Australian National University, PhD Thesis.

intergenerational capacity and develop thought leadership. The goal would be to promote a sustained effort and clear direction for reform that goes beyond the endless changes in institutional arrangements discussed in Chapter 7 to more pragmatic land reform approaches shaped by innovative thinking appropriate for Solomon Islands and Solomon Islanders.

The consultative building process should involve both horizontal networks, in which collaboration among stakeholders takes place on a broad basis, and vertical networks through which specific actors at the national and local levels are engaged. Actors need to work both vertically and horizontally by being constituted within networks; otherwise land reform programs will not develop with efficacy. While land reform is partly a technical exercise, it is also highly political, as with any development project. There is a need to recognise the ‘politics and culture that permeate property rather than its reduction to a technical or legal problem’.¹¹

As an actor myself, I have increasingly become aware of the importance of networks and politics to the development and implementation of effective land policy. Yet a legal approach to land reform tends to completely decontextualise those larger visions of development, and to seek only technical solutions where contextualised political solutions are required. My involvement in land reform work during 2015 required considerable movements between the different actors to create a network and maintain their interest in the research. After the *Building a Pathway for Successful Land Reform in Solomon Islands* report was published

¹¹ Sjaastad, E. and Cousins, B. (2009). ‘Formalisation of Land Rights in the South: An Overview.’ *Land Use Policy*, 26(1): 1-9, 8.

and launched, its translation into shaping land reform thinking in Solomon Islands was both politicised and slow.

Land reform remains an urgent priority for the Solomon Islands Government because of the need to access customary land for economic development, and the present government continues to proceed with plans for further land reform. It has placed an emphasis on customary land recording as a panacea to make land available for economic development. This idea of land recording was associated with the codification of custom, which Andrew Nori had promoted since the 1980s and fed into the policy statements of successive Solomon Islands governments over long period.

The Australian-funded project which delivered the *Building a Pathway* report made an important and timely contribution to the broader debate. However, as with previous reports that provided models to assist developing countries such as Solomon Islands in approaching land reform, the *Building a Pathway* report suffered from the same lack of continuity in linkages between the actors. Two factors contribute to this lack of continuity: First, many of the actors from international donor agencies involved in land reform in developing countries such as Solomon Islands do not stay around once their work contract has expired, and programs often fail for lack of champions who remain on the ground. Second, land reform work is strongly oriented around the project cycle, and once a project cycle ends, the land reform work ends.

For example, after the launching of the *Building a Pathway* report, I returned to Australia to complete my PhD and then moved to resume a teaching position in Vanuatu. Although I maintained contact with national and local key actors involved in land reform, this was more

to do with my connection as a Solomon Islander rather than in any formal role to shape the translation of the land report that I was involved in putting together. Dave Peebles, the former Deputy High Commissioner who was instrumental in supporting the land reform project, also ended his term in Solomon Islands and returned to Australia.

Based on my own observations and experience of accessing local, regional and global narratives, I have come to realise that any real progress in land reform work requires the long term engagement of key actors ‘that go well beyond institutional transfer and capacity building approaches that have so far dominated’¹² how land reform and development programs are framed. The official aims of past land law reform programs have included: the transformation of customary land to registered land estates in order to create legal certainty; the reduction of land disputes; increased productivity; facilitation of equitable distribution and control over land; and the creation of greater administrative efficiency. Such reform could ‘be evaluated only in the context of the values and goals of the people involved’.¹³ Yet, as I demonstrate in this thesis, key actors like Woodford, Alexander, Philips, Brett and Allan had an inevitably Eurocentric frame in their approach to land issues.

This same argument also applies to Solomon Islander actors like Andrew Nori and myself who have had much of our training in Western institutions. Managing and maintaining an awareness of my own conceptual perspectives has been a major challenge. What is becoming

¹² Dinnen, and Allen, ‘Paradoxes of Postcolonial Police-Building’, 224.

¹³ Crocombe, R. (1971). ‘Land Reform: Prospects for Prosperity.’ In Crocombe, R. (ed), *Land Tenure in the Pacific*. Melbourne, Oxford University Press, 375-400, 375; for similar discussion see also Maru, I. and Manau, D. (2002). ‘Pre-Independence and Post-Independence Land Reform Initiatives for Indigenous Participation: A Reflection in Light of Today's Development.’ In Sullivan, N. (ed), *Culture and Progress: The Melanesian Philosophy of Land and Development in Papua New Guinea*. Madang, DWU Press, 149-157.

increasing clear to me is that there are disparate networks at the international, regional, national and local levels. I have come to realise that the different conceptual perspectives of key actors on the relationship between customary land and development, requires me to switch my position according to the context I am in. When I am back in my home area of Lau and Mbalelea in North Malaita, I think and talk about land issues in a very different way compared to how I think and talk about land in Honiara, in the USP lecture room in Vanuatu, or along the corridors of the Coombs building at ANU in Canberra. Based on this personal experience, I would argue, along with scholars such as Ambreena Manji, that understanding actors and their networks is vital in order to determine the kind of values and goals that drive land reform processes.¹⁴

A lot of the land reform work since Solomon Islands attained Independence in 1978 was conceived intuitively. Legal consultants, government officials dealing with land and external development partners such as DFAT have seldom been aware of the historical trajectory of discourses and narratives that influence how actors have approached land reform in Solomon Islands since the colonial era. Most approaches to land reform in Solomon Islands today closely resemble those of the earlier colonial governments. It is essential that we understand the history of land reform in Solomon Islands and elsewhere in order to learn from what has happened in the past.

As an independent country, Solomon Islands is experiencing a process of rapid change due to an increase in population growth, urbanisation and globalisation, all of which have

¹⁴ Manji, A. (2005). 'Cause and Consequence in Law and Development - Bringing the Law Back In: Essays in Land, Law and Development by Patrick McAuslan (Review).' *The Journal of Modern African Studies*, 43(1): 119-138, 121.

contributed to the ongoing contestation over access to land for development. Land consultants, particularly lawyers engaged by the Solomon Islands government and donors to work on land reform projects, define land reform based on narratives that largely ignore what has happened in the past. This thesis demonstrates that a knowledge of the history of land reform, which includes identifying the role of key actors in Solomon Islands, is a necessary prerequisite for future work. Understanding that history and learning from it is important because our knowledge of this history influences and shapes the way we view current land issues, and dictates the kinds of solutions that we propose for ongoing land problems in Solomon Islands and elsewhere in Melanesia.¹⁵

The thesis reveals that land reform is not simply a technical exercise, but rather one that is influenced by global flows of information and conceptual perspectives; by the dominant paradigms of the time; and by particular individuals and their networks. The notion of a global flow of land reform ideas through actor-network based on elements such as the mobilization of associations or alliances, transfer and translation processes and the enlistment of objects such as written laws, is a novel argument in the literature on land reform in the Pacific region. The literature on land tenure and reform in the Pacific has generally been fairly parochial; with the exception of a handful of scholars, including Peter Larmour and Rebecca Monson, the Pacific literature has tended to view land issues and narratives on land reform in the region as unique or exceptional.

What I have tried to show in this thesis is that land issues and narratives on land reform in the Pacific region are by no means unique because the ideas introduced to Solomon Islands

¹⁵ Crabtree, D. (Nov. 1993). 'The Importance of History.' McKenzie Study Center, Gutenberg College. Online: <<http://msc.gutenberg.edu/2001/02/the-importance-of-history/#back2>> (Access 18/9/2016).

have been part of a steady global exchange of ideas during the colonial period. This is not surprising because, as discussed in Chapters 5 and 6, many of the key actors in Solomon Islands had been exposed to this global flow of ideas through study overseas, working in other colonies and interacting with colonial land experts from elsewhere through actor-network alliances.

I have taken a historical approach in my research in order to understand how land reform in Solomon Islands has developed and sustained a particular conception of the relationship between land reform and development. The other theme emergent in my research is the persistence of land reform models driven by key actors, most of whom had a legal background and had worked in Africa, Asia and elsewhere. In addition, land reform during the early colonial era in Solomon Islands was promoted and implemented through colonial networks. Woodford, the first Resident Commissioner, as discussed in Chapter 3, is a classic example. He played multiple roles such as a scientist, colonial administrator, land law drafter and enforcer of colonial law. Woodford was a one-man team, he significantly shaped how the early colonial land laws were drafted and introduced into Solomon Islands.

This demonstrates the importance of multi-disciplinary approaches to land reform, given the complex nature of customary land. Hence, I argue that land reform in Solomon Islands and other developing countries requires a broad team of individuals with training and background in different fields, ranging from technical or legal aspects through to community negotiation and political mobilisation, and acting as a network of associations in the ANT sense, between the local and global. Only then might land reform models or programs have efficacy and relevance in Solomon Islands and elsewhere in Melanesia.

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Frederick Kitto to the Attorney General of Sarawak, 16 November 1956.

Kitto to Brett, 17 July 1957.

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PMB 1290:	Reel 1 Bundle 6, 1/2, <i>Diary 16 April - 5 July 1886</i> : Woodford Diary, 25 June 1886.
PMB 1290:	Reel 5 Bundle 27, 'Annual Reports of cases dealt with in the Solomons by Naval personnel on the Australian Station, 1886-1896'.

(c) Solomon Islands National Archives, Honiara, Solomon Islands.

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BSIP SL/3/7	LR 43-48, Baunani
BSIP 18/II/I:	Claim No. 1-16 & 51, Malayta Co. Claims.
BSIP 18/IV/25/24:	Petition from the Chiefs and Landowners of the Western Sols, 21 June 1921, J F Goldie to the Acting Resident Commissioner of the British Solomon Islands, 19 November 1921.
BSIP 32/V1/8:	Report of the Committee on Registration of Customary Land 1971
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(d) University of Auckland Special Collection, University of Auckland, Auckland, New Zealand.

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WPHC No. 56/1889:	Land Claims embodied in the Notification of the 8 November 1886.
WPHC MP No. 474, 1896:	Purchase Deed of the Island of Tulagi.
WPHC, No. 434 of 1918:	Knibbs to Workman, 5 January 1918, enclosed in Workman to High Commissioner, 12 January 1918.
WPHC MP No.450-1922:	Claim No. 17 Matanikau, Kookoom, 9 August 1920.
WPHC MP No.452-1922:	Claim No. 19 Russell Islands, 9 August 1920.
WPHC MP No 2-1911	280-1911, MP No 248-1911. Copy of land deeds including copy of conveyance of land at Vella Lavella, Natives to Wesleyan Methodist Mission.
WPHC MP No 2-1911	280-1911, The Solomon (Land) Regulation, 1896.

WPHC MP No 2-1911	280-1911, MP No 248-1911: Resident Commissioner (Woodford) to Francis G Clark (lawyer), 10 January 1911.
WPHC MP No 2-1911	280-1911, MP No 248-1911: Francis G Clark to High Commissioner for the Western Pacific, 14 February 1911.
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WPHC MP No 2-1911:	280-1911, MP No 248-1911: High Commissioner to Resident Commissioner (Woodford), 29 March 1911.
WPHC MP No 2-1911:	280-1911, MP No 248-1911: Secretary to the High Commissioner for the Western Pacific to Francis G. Clark (lawyer), 29 March 1911.
WPHC MP No 2-1911:	280-1911, MP No 248-1911: Rev. B Danks, General Secretary, The Methodist Missionary Society of Australia to The High Commissioner for the Western Pacific, 10 May 1911.
WPHC MP No 2-1911:	280-1911, MP No 248-1911: Resident Commissioner, Woodford to Secretary to the High Commissioner for the Western Pacific, 23 May 1911.
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WPHC MP No 78-328:	490-1919: Crown Surveyor, Mr. Knibbs to Acting Resident Commission, 29 January 1917.
WPHC MP No 78-328:	490-1919: Acting Resident Commissioner to High Commissioner for the Western Pacific, 29 January 1917.
WPHC MP No. 78-328:	494-1917: Kirk, Sub-Inspector to Acting Resident Commissioner, 30 January 1917, 494-1917.
WPHC MP No 78-328:	494-1917: Acting Resident Commissioner to the High Commissioner for the Western Pacific, 1 February 1917.
WPHC MP no 78-334:	1907-1917: Secretary of State to High Commissioner for Western Pacific (Sir Bickham Sweet-Escott), 6 June 1917.
WPHC MP No. 78-333:	1824-1917: Crown Survey, Knibbs to Acting Resident Commissioner, 7 June 1917.
WPHC MP No. 78-339:	38-1918: High Commissioner for the Western Pacific to Secretary of State, 14 March 1919.
WPHC MP No. 78-340:	237-1918: Report of Crown Surveyor of 5 November 1917.
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WPHC MP No. 78-340:	242-1918. 'Acting Resident Commissioner to High Commissioner for Western Pacific, 8 December 1917.
WPHC MP. No. 2067-1924:	Native Claim No. 41 Wanderer Bay, Guadalcanal.
WPHC 4:	No. 1152 of 1915: 'Fedderick Barnett to Escott, 2 March 1915'.
WPHC 4:	No. 2734 of 1915: Barnett to R.B Hill, 30 June 1915.
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WPHC 4:	No. 2289 of 1916: Barnett to High Commissioner, 1 August 1916.
WPHC 4:	No. 490 of 1917: High Commissioner to Secretary of State, 23 March 1917.
WPHC 4:	No. 1907 of 1917: Secretary of State to Escott, 6 June 1917.
WPHC 4:	No. 2238 of 1917: Secretary of State to High Commissioner, 19 June 1917.
WPHC 4/IV:	MP No 38-1918: From High Commissioner to Secretary of State.
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- WPHC 4/IV: AU Microfilm 79-221: 1999-1920: Governor General to High Commissioner for the Western Pacific, 15 September 1920.
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- WPHC 4/IV: AU Microfilm 79-221: 1999-1920: R. R Garran, Secretary Commonwealth of Australia, Attorney General's Department, Melbourne to F. Beaumont Phillips, 22 September 1920.
- WPHC 4/IV: AU Microfilm 79-221: 1999-1920: Gazette Notice No. 124, Appointment of F Beaumont Phillips, 16 November 1920.
- WPHC 4/IV: AU Microfilm 79-221: High Commissioner to the Secretary of State for the Colonies, 19 November 1920.
- WPHC 4/IV: AU Microfilm 79-221: 1999-1920: Acting Resident Commissioner to High Commissioner for the Western Pacific, 25 November 1920.
- WPHC 4/IV: AU Microfilm 79-240: Gilchrist G. Alexander to the Acting Chief Secretary, 31 May 1922.
- WPHC 4/IV 1922: AU Microfilm 79-235: J.F Goldie to the Lands Commissioner, January 6 1921.
- WPHC 4/IV 1922: AU Microfilm 79-235: J.F Goldie to the Lands Commissioner, 14 February 1921.

WPHC 4/IV 1922:	AU Microfilm 79-235: F. B Phillips, Lands Commissioner to J.F Goldie, 9 February 1921.
WPHC 4/IV 1922:	AU Microfilm 79-235: March 1921 Petition.
WPHC 4_IV 1922:	AU Microfilm 79-235: Memorandum: The Lands Commission to the Acting Resident Commissioner, 10 December 1921.
WPHC 4_IV 1922:	AU Microfilm 79-239: Frederick Beaumont Phillips to the Resident Commissioner, 22 April 1922.
WPHC 4/IV:	WPHC MP No. 1129-1924: Lands Commissioner, Frederick Beaumont Phillip to High Commissioner for the Western Pacific, 1 July 1924.
WPHC 4/IV:	WPHC MP No 79-264: 2067-1924: Lands Commissioner's Report on Native Claim No. 41, 15 August 1924.
WPHC 8/III	No. 15, Rear Admiral Tryon to Captain Brooke, H.M.S. "Opal". Australian Station, New Guinea and Solomon Islands 1886.
WPHC 8/III/31:	Vol. I, 'Memo on Land Policy in the British Solomon Islands Protectorate.1893-1914.
WPHC 8/III/31:	Vol. I, Woodford to Thurston, despatch No. 1 of 6 June 1896 referred in Extracts from 'Report upon British Solomon Islands. C.M Woodford 1896'.
WPHC 8/III/31:	Vol. I: Thurston to Secretary of State, Despatch No. 79 of 12 December 1896 referred to in Memo on Land Policy in the British Solomon Islands Protectorate. 1893-1914.
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WPHC 8/III/32:	Vol. I, Woodford to Thurston, despatch No. 3 of 4 July 1896.
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WPHC 9/II/48/32:	Vol II: British Solomon Islands Lands Commission Grant of £Stg 7, 900.

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WPHC 16/II/165/3/8:	Lands and Mines Annual 1955 – 1956. Report. 1957.
WPHC 16/II/188/1/45:	Mr Brett's Visit (Faculty of Law Melbourne University) and Revision of Land Legislation, B.S.I.P., 6 December 1957.
WPHC 28/1/219/2/20:	Vol. II: Public Notice 11/63, Land and Titles Ordinance 1959, 'Land: B.S.I.P. Land & Titles Legislation: Adjudication. 1960-1966'.
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WPHC 28/1/219/2/20:	Vol. I: Extract from letter dated 5 February 1964 from A.G Cross to G. Wyn Jones. Land: B.S.I.P. Land & Titles Legislation: Adjudication. 1960-1966.
WPHC 28/1/219/2/3:	Vol I: D.T Lloyd to T.D.H Morris, 30 January 1961: Lands: B.S.I.P Lands and Titles Regulation Implementation. 1958-1965.

(e) University of Melbourne Archives, University of Melbourne, Melbourne, Australia

Peter Brett Peter Papers (1918-1975)

Group 1: 1/1/2:	Explanatory Memorandum: Re Draft Land Code for Brunei.
Group 1/2/2:	Brunei Commissioner of Lands letter to Cowen, 8 January 1966.
Group 1/1/1:	Brett to the Western Pacific High Commissioner, 6 September 1957.
Group 1: 1/1/1:	Minutes of a meeting held in the Chief's Secretary Office on Friday 6 September 1957, to discuss the proposed New Land Legislation as drafted by Mr. P. Brett.

- Group 1: 1/1/1: Minutes of a meeting held in the Chief Secretary's Office on Friday 6 September, 1957, to discuss the proposed New Land Legislation as drafted by Mr. P. Brett: Brett to the Western Pacific High Commissioner, 6 September 1957.
- Group 1: 1/1/1: Notes in Application of Minutes (In F.165/10/4) of the Discussion held at Government House on Monday 9 September 1957.
- Group 1: 1/1/1: Peter Brett to Commissioner of Lands Commissioner, 23 October 1957.
- Group 1: 1/1/1: Commissioner of Lands to Chief Secretary, 20 November 1957.
- Group 1: 1/1/1: Brett's Explanatory Memorandum.
- Group 1: 1/2/1: Explanatory Memorandum: RE Draft and Code for Brunei.
- Group 1: 1/1/2: Draft Land and Titles Regulation 1957 and Land and Titles Regulation 1959. (i.e. contains draft and Regulation in final form).
- Group 1: 1/1/3: Correspondence. Chiefly between Brett and Keith Kitto, Commissioner of Lands, Honiara, BSIP, relating to Regulation.

III. Laws of Solomon Islands

Constitution

The Constitution of Solomon Islands 1978

Pacific Orders

Western Pacific Order in Council 1877 and 1893

i) Regulations

Queen's Regulation No. 4 of 1896

Solomons Land Regulation of 1896

Queen's Regulation No. 3 of 1900

The Solomons (Waste Lands) Regulation of 1900.

King's Regulation No. 1 of 1901

The Solomons (Waste Lands) Regulation 1901

King's Regulation No. 1 of 1904

The Solomons (Waste Lands) Regulation 1904

King's Regulation No. 3 of 1914

Solomons Land Regulation 1914

King's Regulation No. 4 of 1914

Solomon and Gilbert and Ellice Commissions of Inquiry 1914

King's Regulation No. 4 of 1915

Solomons Land Amendment Regulation 1915

King's Regulation No. 5 of 1915

Solomons Land Surveys Regulation 1915

King's Regulation No. 6 of 1915

Solomons (Armed Force) Constabulary Regulation 1915

King's Regulation No. 8 of 1915

Solomons Labour Regulations 1915

King's Regulation No. 9 of 1915

Solomons Land (Amendment) Regulation 1915

Kings Regulation No. 6 of 1918

Solomon Crown Acquisition of Land (Public Purpose) 1918

King's Regulation No. 2 of 1919

Solomons Land Registration (Amendment) 1919

King's Regulation No. 7 of 1920

Solomons Land (Amendment) 1920

King's Regulation No. 10 of 1920

Native Tax (Native Tax Regulation 1920)

King's Regulation No. 6 of 1921

Solomons Land Registration (Amendment) 1921

King's Regulation No. 15 of 1921

Solomons Labour Regulation 1921

King's Regulation No. 10 of 1922

Solomons Land Registration (Amendment) 1922

King's Regulation No. 15 of 1922	Solomons Labour 1922
King's Regulation No. 17 of 1922	Native Administration (Solomons) 1922
King's Regulation No. 19 of 1922	Solomons Constabulary (Amendment) 1922

(ii) Legislation

Native Court Ordinance 1942 (Solomon Islands)

Native Courts Regulations (No 2 of 1942)

Land and Titles Ordinance 1959

Land and Titles (Amendment) Ordinance 1964

Land and Titles Ordinance in 1968

Land and Titles (Amendment) Ordinance 1977

Forest Resources and Timber Utilisation Act 1978 [Cap 40]

Lands (Amendment) Act 1972 [Cap 98] (Solomon Islands).

Research Act [Cap 152] (Solomon Islands).

Local Courts (Amendment) Act 1985

Land and Titles (Amendment) Act 1988

Land and Titles Act [Cap 133] (Solomon Islands).

Customary Land Records Act 1994.

Customary Land Records Regulation 2007

Land and Titles (Amendment) Act 2014.

Land and Titles (Amendment) Act 2016.

Table 1: Key Actors in Land Reform in Solomon Islands

Actors	Period	Role	Actions
Charles Morris Woodford	1886-1914	Naturalist; Resident Commissioner from 1896-1914	Involved in drafting early colonial land law; granting of long term leases
Gilchrist Gibb Alexander	1919-1920	Lands Commissioner	Determined land grievances
Frederick Beaumont Phillip	1920-1924	Lands Commissioner	Determined land grievances
Colin Hamilton Allan	1952-1957	Special Lands Commissioner	Studied land issues and recommended land law reform
Frederick Kitto	1956-1958	Commissioner of Lands	Contributed to land law reform
Peter Brett	1957-1958	Consultant	Drafted new land law
Stanhope Rowton Simpson	1960s	Advisor	Recommended amendment of land law
J.B Twomey	1960s	Commissioner of Lands	Implemented new land law
Ian Ernest Morgan	1967	Consultant	Drafted amendment of land law
Gerald Paul Nazareth	1970-1971	Chairperson, Committee on Land Settlement	Involved in recommending a system of land registration
Andrew Nori	1985-2013	Politician, Lawyer, Land Consultant	Land recording as part of land reform.
AusAID	2000s	Donor	Land Administration; Making Land Work Report.
Genesis Kofana	2013-2016	National Land Consultant	Prime Minister's Office
Siobhan McDonnell	2015	Consultant	Building Pathways to Land Reform Report
Willy Hiutare	2015	Advisor/Consultant	Ministry of Lands, Housing and Survey

Appendices

Appendix A – Ethics Approval

From: aries@anu.edu.au <aries@anu.edu.au>

Sent: Thursday, 13 December 2012 12:48 AM

To: Joseph Foukona

Cc: Human.Ethics.Officer@anu.edu.au; Chris.Ballard@anu.edu.au

Subject: Human Ethics Protocol 2012/639

Dear Mr Joseph Foukona,

Protocol: 2012/639

Land Reform in Melanesia: Solomon Islands, Vanuatu and PNG

I am pleased to advise you that your Human Ethics application received approval by the Chair of the Humanities & Social Sciences DERC on 13 December 2012.

For your information:

1. Under the NHMRC/AVCC National Statement on Ethical Conduct in Human Research we are required to follow up research that we have approved. Once a year (or sooner for short projects) we shall request a brief report on any ethical issues which may have arisen during your research or whether it proceeded according to the plan outlined in the above protocol.
2. Please notify the committee of any changes to your protocol in the course of your research, and when you complete or cease working on the project.
3. Please notify the Committee immediately if any unforeseen events occur that might affect continued ethical acceptability of the research work.
4. Please advise the HREC if you receive any complaints about the research work.
5. The validity of the current approval is five years' maximum from the date shown approved. For longer projects you are required to seek renewed approval from the Committee.

All the best with your research,

Kim

Ms Kim Tiffen
Ethics Manager,
Office of Research Integrity,
Research Services,
The Australian National University

Appendix B – Solomon Islands Research Permit

THE RESEARCH ACT 1982 (No. 9 of 1982)

RESEARCH PERMIT

Permission is hereby given to:

1. Name: Joseph D. FOUKONA
2. Country: Solomon Islands
3. To undertake research in (subjects): To examine the history of land reform in three Melanesian countries: Solomon Islands, Vanuatu and Papua New Guinea
4. Ward(s): Honiara
5. Province(s):
6. Conditions:
 - a. To undertake research only in the subject areas specified in 3 above.
 - b. To undertake research only in the ward(s) and Province(s) specified in 4 and 5 above.
 - c. To observe with respect at all times local customs and the way of life of people in the area in which the research work is carried out.
 - d. You must not, at any time, take part in any political or missionary activities or local disputes.
 - e. You must leave 4 copies of your final research report in English with the Solomon Islands Government Ministry responsible for research at your own expense.
 - f. A research fee of *SBD300.00* and deposit sum of *SBD200.00* must be paid in full or the Research Permit will be cancelled. (See sec. 3 Subject. 7 of the Research Act).
 - g. This permit is valid until 31/6/14 provided all conditions are adhered to.
 - h. No live species of plants and animals may be taken out of the country without approval from relevant authorities.
 - i. A failure to observe the above conditions will result in automatic cancellation of this permit and the forfeit of your deposit.

Signed:


Minister for Education and Human Resources Development



Date:

6/1/14

Appendix C – Application for a Renewed Research Permit



21 July 2014

Pacific and Asian History
School of Culture, History and Language
College of Asia and the Pacific

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joseph.foukono@anu.edu.au

Canberra ACT 0200 Australia
www.anu.edu.au

The Hon. Dick Ha'amori MP
Minister for Education and Human Resource Development
P.O. Box G 28
Honiara
Solomon Islands.

Dear Minister,

Application Seeking Approval for a Renewed Research Permit – Change in Research Time Period and Research Area.

I write to seek your approval to grant me a renewed research permit for a new research time period from 1st August to 31st December 2014 and an extension of my research area, apart from Honiara, to include Guadalcanal Province, Central Province and Malaita Province.

The reason for this application is because under my current research permit permission is only given to undertake research in Honiara and my approved research permit has expired on the 31/6/2014.

I have not yet undertaken my fieldwork research in Solomon Islands because I spent the first six months of 2014 completing my archival research. Having completed my archival research I now have identified my field case studies to four geographical areas (i.e Honiara, Guadalcanal, Central and Malaita).

I would greatly appreciate your approval on the above subject matter. If you require any additional information, please do not hesitate to contact me. I can be reached at: +61 4 3422 6425 or <joseph.foukono@anu.edu.au>.

Yours sincerely,

Joseph. D. Foukono

PS.

Request granted.

Ha'amori
Minister - MEHRD

22/7/14

Appendix D – Information Sheet

INTERVIEWEE PARTICIPANT INFORMATION SHEET

Research Subject: Land Reform in Melanesia: Solomon Islands

Research Period: March to December 2014.

Researcher: My name is Joseph D. Foukona and I am a PhD candidate in the School of Culture, History and Language, College of Asia and the Pacific, Australian National University.

Research Purpose: I am undertaking this study to learn about the history of land reform in Melanesian: Solomon Islands. I am interested to examine and analyze the continuing challenge in Melanesian of land reform by looking at historical processes in these countries that influenced the nature and need for land reform and how this is approached to achieve desirable outcomes.

This research will provide a vital contribution to the existing pool of literature on land reform in Melanesia. It is my hope that this research will provide a significant platform for the government of Solomon Islands and elsewhere in Melanesia as well as other stakeholders to re-evaluate land reform in order to find ways to appropriately address the land reform challenges in Melanesia.

Research Activities: My research will involve me interviewing civil servants, consultants, experts, and landowners. I will conduct the interview on an individual basis or several people at the same time (focus group). If you wish to speak to me individually, please let me know. I will be conducting the interviews in Solomon Islands (Honiara, Wanderer Bay and Malaita). This will involve a visit to conduct an interview with key people such as civil servants, consultants, experts, and landowners involved in land reform. In addition to interviews I will do archival research.

Participation and use of information: Participation in this research is entirely voluntary. You are not obliged to participate and if you decide to participate, you are free to withdraw at any time without having to give a reason and without consequence. If you do withdraw, I will not use the information you have given me in my research.

If you agree to participate, you will be asked to undertake at least one interview with the researcher to discuss your experiences of your involvement in land reform programs in Melanesia.

The interview will take approximately 45 minutes. A digital recorder will be used to record the interview if necessary but with your consent. There should be no risks or discomfort. There will be no payment of money.

Any information or personal details gathered from this interview or in the course of the research are confidential and may be used in my research thesis and possibly used in other publications such as, journal articles, books and conference presentations. You will not be identified or named in any publication of the results without your consent. In accordance with Australian National University research requirements, all data gathered in this research will be kept and electronically stored for at least 5 years with a password protected code on a computer hard drive and a portable external drive.

Research Results: A summary of the results of the data can be made available to you on request.

Questions and concerns: If you have any questions or concerns about any part of this research please feel free to contact me on my local number +677 38622 or at the address below:

Joseph D. Foukona
School of Culture, History and Language,
College of Asia & the Pacific
Australian National University
Canberra ACT 0200, AUSTRALIA
Email: Joseph.foukona@anu.edu.au

If you are unable to contact me you may leave a message with the following local contacts, they will give your message to me:

Mr. Philip Kanairara
Principal Legal Officer
Solomon Islands Law Reform Commission
P.O Box 1534, Honiara
Solomon Islands
Tel (677) 38773; Fax (677) 38760
Email: philipkanairara@lrc.gov.sb

Ms. Fane Rai
Secretary, School of Law
University of the South Pacific
Emalus Campus, PMB 9072
Port Vila, Vanuatu
Phone: +678 (678) 22748
Email: fane.raai@vanuatu.usp.ac.fj

If you have any concerns you can also contact my PhD supervisor:

Associate Professor Dr. Chris Ballard
School of Culture, History and Language
College of Asia & the Pacific
Australian National University
Canberra ACT 0200
AUSTRALIA
Phone: +61 2 6125 0305
Email: chris.ballard@anu.edu.au

The ethical aspects of this research have been approved by the Human Research Ethics Committee at the Australian National University. If you have serious concerns regarding the way the research was conducted please contact the ANU Human Research Ethics Committee at the address below:

Secretary, Human Research Ethics Committee
Research Office
The Australian National University
Canberra ACT 0200
AUSTRALIA
Phone: +61 2 6125 3427
Email: Human.Ethics.Officer@anu.edu.au

Appendix E – Consent Form

INTERVIEW CONSENT FORM

Research Subject: Land Reform in Melanesia: Solomon Islands

1. I, *(participant's name)*..... have read (or have had read to me) and understand the information above and any questions I have asked have been answered to my satisfaction.
2. I agree to participate in this research, and I understand that I will be asked to involve in an interview with the researcher.
3. I understand that I can withdraw from further participation in the research at any time without consequence. If I withdraw, information I give in this interview will not be used in the research.
4. I understand that any information I provide may be used in the PhD research thesis and possibly used in other publications such as, journal articles, books and conference presentations.
5. I understand that any information I provide is confidential and I will not be identified or named any publications unless I consent. Please circle the option you choose:
 - a) I consent for the use of my real name in any publications.
 - b) I do not consent for the use of my real name in any publications.
6. I understand that I can choose whether I wish to have my interview recorded with a digital recorder. Please circle the option you choose:
 I consent to have my interview recorded.
 I do not consent to have my interview recorded.
7. I understand that in accordance with Australian National University research requirements any information I provide will be kept securely and electronically stored for at least 5 years with a password protected code on a computer hard drive and a portable external drive.

Please sign to confirm that you understand and agree:

Name..... Signature.....

Date.....

Appendix F – Approval to Access PMB 1121 (Unilever)

From: Owen-Edwards, Lesley
Sent: Thursday, 17 April 2014 11:38 AM
To: Joseph Foukona
Subject: RE: Request access to PMB 1121

Joseph,

I am writing to confirm that we have no objection to you accessing this material for your research.

Should you wish to publish your research and reproduce extracts from the archives in the future, please come back to me and i will sort out the permission form for you

Lesley

[Correct Sig]

Lesley Owen-Edwards Senior Archivist, Unilever Archives & Records Management, Legal Group

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Appendix G – Access to WPHC Archival Records, University of Auckland

From: Stephen Innes

Sent: Tuesday, 18 February 2014 1:08 AM

To: Joseph Foukona

Subject: RE: WPHC Archival Record

Dear Joseph,

You are welcome to consult the Western Pacific High Commission records in February and March. An online guide to the WPA collection is available [here](#). The guide describes how to search the online finding aids (content lists) for the collection, which you appear to have already mastered. However, it will answer a number of other questions for you.

You'll see from the guide that the WPA is a restricted collection, so I have attached the registration documents for your information. We can complete the forms and discuss issues about the second document when you arrive. In the meantime, I will order in the first 25 boxes of material containing the files you have listed. Note also that access to much of the early Inwards Correspondence of the WPA is available on microfilm, both here and at the National Library of Australia in Canberra (see attached reference).

We also have an index to the early WPHC correspondence which we can help you search when you visit. In addition, I am attaching a list of references to Phillips commission cases we have compiled: this gives the outcome of all cases with references to the relevant WPHC file (eg "M.P. 1489/24" is shorthand for WPHC 4/IV/1489/1924).

Yours sincerely, Stephen Innes (ALIANZA)
 Special Collections Manager
 General Library, Te Herenga Mātauranga Whānui
 The University of Auckland
 Private Bag 92019
 Auckland 1142
 New Zealand
 Telephone (649) 373-7599 ext. 88062
 Fax (649) 373-7565
<http://www.library.auckland.ac.nz/about/speccoll/home.htm>